THERE IS NO MALE PREFERENCE IN ISLAMIC LAW

SHAYKH MUHAMMAD AL-TA'WIL

SECOND EDITION

A translation of La dhukuriyya fi'l-fiqh

by Dr. Abdullah Bin Hamid Ali

"Some people have problematized 'the male-bias in Islamic law' claiming to be motivated by the defense of women... It is a false claim whose goal is to undermine the jurists and instill doubt in the law."
—Shaykh Muhammad al-Ta'wil

Is Islam unfair to women? That's a question many people ask today. In this important book, Shaykh Muhammad al-Ta'wil, a respected Moroccan scholar, shows how Islamic law has been misunderstood and misrepresented when it comes to the treatment of women. He explains—using strong evidence from the Qur'an, Sunnah, and scholarly tradition—that claims of male bias in Islamic law are based on misinformation and false assumptions.

This second edition includes a special appendix by Dr. Abdullah bin Hamid Ali, titled ***"Women and Intelligence."*** In it, Dr. Ali takes a closer look at some hadiths that are often quoted out of context and provides thoughtful explanations that help clear up confusion.

Accessible, powerful, and rooted in tradition, There is No Male-Preference in Islamic Law is perfect for anyone—especially students and young Muslims—who want to understand Islam's true position on gender justice.

Left: ***Dr. Abdullah Bin Hamid Ali***
Right: ***Shaykh Muhammad al-Ta'wil***

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بسم الله الرحمن الرحيم

There is No Male-Preference in Islamic Law

BY DR. SHAYKH MUḤAMMAD AL-TA'WĪL
(1934–2015)

A Translation of *Lā Dhukūriyyah fī al-Fiqh*
BY DR ABDULLAH BIN HAMID ALI

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PREFACE TO THE 2ND EDITION

This edition of *There is No Male Preference in Islamic Law* comes with a new appendix entitled "Women & Intelligence." As the famed hadith regarding the female intellect (*nāqisāt ʿaql*) has been one of the greatest sources of controversy today, I felt it required a fresh critical examination of its authenticity, language, and context. I believe many readers will find the chapter useful while others may be less impressed.

Fidelity to scripture can be a major challenge, especially when little reason to doubt authenticity exists. And the soul often resists calls for uncritical submission anytime a religious doctrine seems to defy logic, nature, and our moral presumptions. As many scholars have explained, Muslims have struggled to find the right balance between theological voluntarism and intellectualism for much of our history. The author's stern tone directed at those who resist the embrace of prophetic guidance and, who further seek to rattle the faith of unassuming Muslims, is the result of his strong embrace of divine command theory.

Not much has changed in this edition in terms of translation. Other than a few parts of the book, the greatest change relates to the citations in that I have tried to provide the original number to every hadith cited by the author. Most footnotes are from the author's original work, while my own contributions are preceded by the words "translator's note" and "references." I was able to track down most of the Shaykh's references and believe this will be helpful to readers interested in looking deeper into the works cited by him in the footnotes.

Dr. Abdullah bin Hamid Ali
14 May 2025 | Dublin, CA

TRANSLATOR'S INTRODUCTION

1. Muḥammad b. Qāsim al-Ta'wīl (1934–2015)

Abū Ḥamīd Muḥammad b. Muḥammad b. Qāsim Al-Ta'wīl was one of Morocco's most impressive scholars and one of the Muslim world's great legal minds of the 20th century. He was born in the small town of Ain El-Bārda in 1934. Like so many scholars before him, he was raised in a family committed to piety and learning. His father, Muḥammad b. Qāsim, as his first teacher was himself a scholar of the seven Qur'anic modes of recitation (*al-qirā'āt al-sab'*). He was eager for all of his children to become proficient in their understanding of Islam. As was custom, their learning begun with the memorization of the Qur'an. Despite being younger, Muḥammad Al-Ta'wīl completed the memorization of the Qur'an before his two older brothers Al-Mufaḍḍal and Aḥmad. Their father would then send the three of them off to study Arabic and the Islamic sciences in the surrounding village schools. And after memorizing the *Alfiyah* of Ibn Mālik (grammar) and the *Mukhtaṣar* of Khalil al-Jundi (jurisprudence), Muḥammad was sent, with funding his father had procured, along with his two elder brothers to study with Sīdī Muḥammad al-'Arabī al-Baqqālī. Then, in 1947 after his youngest brother Husayn completed the memorization of the Qur'an, their father decided that it was time for the four of them to head off to study in Fes at the historical Al-Qarawiyyīn central mosque. After an entry and placement exam, they all matriculated into the program of study which included a curriculum of law, theology, grammar, and arithmetic. Nine years later at the age of 22, Muḥammad and his brothers received the unfortunate news of their father's demise in 1956. Although not the eldest, his mother insisted that he return home to console

and support her, apparently, due to her intuiting that of her four boys Muḥammad was the most responsible and capable of resuming his studies at any time without struggle. Muḥammad, however, would not allow his return home to serve his mother become a missed opportunity to continue to expand his knowledge and benefit those around him. Consequently, he, along with some of his peers, opened a local branch of the string of schools whose central office was located in the nearby town of Ghafsāy. He would serve as a tutor often serving as the designee and substitute for the schools' superintendent. One year later in 1957, he would successfully complete his qualifying exams at Al-Qarawiyyīn (*imtiḥān al-ʿālimiyyah*) despite spending the whole year in his home town. Having an impeccable memory aided him well, considering the fact that in addition to the *Alfiyah* and *Muhktasar*, he would also eventually memorize Ibn Subki's *Jamʿal-Jawāmiʿ* (legal theory), Al-Qazwīnī's *Al-Talkhīṣ* (rhetoric), and the *Tuḥfat al-Ḥukkām* of Ibn ʿĀṣim (personal status law). After acquiring his graduate diploma, he was appointed as a professor in the branch of Al-Qarawiyyīn University located in the city of El-Jadīda.

Muḥammad Al-Taʾwīl studied with many of Morocco's great scholars including Muḥammad b. ʿAbd al-Qādir al-Saqallī, Muḥammad b. al-Ḥasan al-Zarhūnī, ʿAbd al-Karīm al-Dāwdī, ʿAbd al-Hādī al-Yaʿqūbī Khabīza, and ʿAbd al-Hādī al-Tāzī. He completed multiple degrees including a doctorate in Islamic Studies. He also contributed greatly to Morocco's national religious education curriculum serving as adviser and committee member for the national testing standards for Moroccan high school curriculum, member of the king's council for the review of the personal status law code, member of the committee for drafting the family law code of the Ministry of Endowments and Islamic Affairs, and a member of the local scholars council of Fes as well as the supreme scholars council of Rabat. This is all in

addition to his regular teaching schedule in the Al-Qarawiyyīn mosque, the Faculty of Shariah, and other universities in Fes. He would often appear substituting for his colleague the late grand mufti Muḥammad Ghazi Husseini on the mainstream televised legal responsa program entitled "*Rukn al-Muftī.*"

In addition to Al-Ta'wīl's many efforts and accomplishments, he has published many works and written many academic peer reviewed articles. Among his books and articles are:

- *Khaṣā'iṣ al-Madhhab al-Mālikī*: The Special Characteristics of the Mālikī School (143 pages)
- *Zakāt al-'Ayn wa Mustajiddātuhā*: Zakat on Currency and Its New Developments (207 pages)
- *Lā Dhukūriyyah fī al-Fiqh*: Challenging the Claim that Men are Preferred in Islam/*There's no Male Preference in Islam* (89 pages)
- *Zirā'at al-A'ḍā' fī al-Fiqh al-Islāmī*: Organ Implants and Donation in Islamic Law (68 pages)
- *Shadharāt al-Dhahab fī mā Jadda fī Qaḍāyā al-Nikāḥ wa al-Ṭalāq wa al-Nasab*: Contemporary Matters Related to Marriage, Divorce, and Blood Ties (258 pages)
- *Mawqif al-Sharī'ah min I'timād al-Khibrah al-Ṭibbiyyah wa al-Baṣmah al-Wirāthiyyah fī Ithbāt al-Nasab wa Nafyihi*: A work on the use of medical expertise and DNA testing in determining paternity (147 pages)
- *Al-'Adhb al-Zallāl fī Fiqh al-Amwāl*: A work on property law (214 pages)
- *Mushkilāt al-Faqr: Al-Wiqāyah wa al-Īlāj fī al-Manẓūr Al-Islāmī*: An Islamic solution to the problem of poverty (107 pages)
- *Ishkāliyyat al-Amwāl al-Muktasabah Muddat al-Zawjiyyah: Ru'yah Islāmiyyah*: An Islamic perspective on shared marital wealth (116 pages)

- *Wa Akhīran Waqa'at al-Wāqi'ah wa Ubīḥa al-Ribā: Al-Fawā'id Al-Bankiyyah*: Criticism of a legal opinion legitimating the collection of bank interest (96 pages)
- *Al-Waṣāyā wa al-Tanzīl fī al-Fiqh al-Islāmī*: A work on comparative legal study of Islamic wills and related matters. (689 pages)
- *Al-Lubāb fi Sharḥ Tuḥfah al-Ṭullāb*: A poem and commentary on Islamic Inheritance Law (347 pages)
- *Al-Waṣiyyah Al-Wājibah fī al-Fiqh al-Islāmī*: The Obligatory Bequest in Islamic Law (137 pages)
- *Al-Sharikāt wa Aḥkāmuhā fī al-Fiqh al-Islāmī*: The Laws of Corporations in Islamic Law (563 pages)
- *Minhajiyyah 'Umar b. al-Khattāb fī al-Ijtihād ma'a al-Nass*: The Juristic Preferences of 'Umar b. al-Khattab (144 pages)
- *Ma'a 'Āisha Umm al-Mu'minīn—God be pleased with her: Hayātuha al-Usariyyah wa Masīratuhā al-'Ilmiyyah*: The Family and Intellectual Life of 'Āisha, Mother of the Faithful (160 pages)

The scholar Aḥmad Bōnō said about Muḥammad Al-Ta'wīl, "Sīdī Muḥammad Al-Ta'wīl has a strong memory and is proficient in Mālikī jurisprudence and the jurisprudence of other schools."

Al-Ta'wīl was a special man with special talents. Few would know this if one had ever met him. Due to an ailing heart and pacemaker, he struggled to project his voice. Consequently, many often failed to notice the jewel of knowledge he was due to his lack of celebrity charisma. He was a teachers' teacher. And I, personally, attended many a lesson of his alongside my other teachers suddenly finding myself as one of their peers. In this regard, one of his students of many years and one of my own teachers Dr. Muḥammad Abyāṭ said, "Ustādh Sīdī Muḥammad

b. Muḥammad Al-Ta'wīl is a scholar and jurist a master of Mālikī jurisprudence. And no one of his like in mastery and knowledge of the school of Mālik b. Anas exists in Fes."[1]

Teachers often have a lasting influence on students. And while I am indebted to all of my teachers, Muḥammad Al-Ta'wīl's influence on my thought has been enormous. It is rare that I differ with his thinking and legal wisdom. That may have much to do with what I gleaned of his sincerity and academic mastery.

I first met him after completing my first year of study in Fes at the University of Al-Qarawiyyīn. I had never heard of him before but was very familiar with the inspiring American scholar Ḥamza Yūsuf. In the summer of 1998, Ḥamza Yūsuf was leading a delegation of international foreign students in intensive study as part of the famed *Riḥla* travel study program organized by the Deen Intensive Foundation. This would be the first time I met Yūsuf as well.

To feed my curiosity, I visited the ancient Al-Qarawiyyīn mosque to observe what was happening with these foreign students. After meeting Yūsuf, I quickly discovered that the Moroccan Ministry of Endowments and Islamic Affairs had commandeered the program, insisting that only the scholars of Al-Qarawiyyīn are allowed to teach therein. Consequently, the teachers employed by *Riḥla* were relegated to the role of translators. Short of staff, after learning about my presence in Morocco for studies, Yūsuf requested my assistance in translating the lectures delivered by Muḥammad Al-Ta'wīl and 'Abd al-'Azīz al-Qassār. My acceptance immediately transformed me into a direct student of Muḥammad Al-Ta'wīl. I would serve in

1 Abdal-Kariem Ahamdoush "*Al-Nasamāt fi Tarājim 'Ulamā' wa Sulahā' Iqlīm Taounāte*" TAONATE http://taounate.net/archives/771 (08/15/2014).

the capacity of a translator of two of the most important Islamic sciences: theology and jurisprudence, based on Ibn 'Ashir's *Al-Murshid Al-Mu'in* along with Mayyārah's abridged commentary. Anwar Muhaimin, another one of my blessed and highly influential teachers, with whom I was tasked to split translation tasks, did most of the translation for Al-Qassār's lessons in Tajwid.

Impressed with what I had learned and the opportunity to contribute to the success of that summer's *Rihla*, I would develop a relationship of tutelage with Al-Ta'wīl beyond the summer. This took the form of regular attendance at his weekly lessons from Ibn al-Subkī's *Jam' al-Jawāmi'* on the topic of jurisprudential foundations and principles as well as regular visits to his home to review my summaries of the information I learned from the *Mukhtaṣar* of Khalīl al-Jundī and other works. Al-Ta'wīl was always accommodating, putting up with my sudden visits to his home on any given day. I would also visit him sometimes along with some of my other university teachers, Dr. Abdullah Ġhāzīwī and Dr. Abdullah al-Hilālī. During my last visit to him in 2013 with my good friend Luqman Williams (d. 2017), Al-Ta'wīl gifted me copies of as many of his published works he had available as if perceiving that this might be the last time I would see him. Two years later, I received the unfortunate news of his passing.

Muḥammad Al-Ta'wīl was an intellectual powerhouse. And it is rare these days for students of knowledge to be able to claim to have studied with a master. So, I take great pride in being able to say that he was my actual teacher, not merely someone I encountered. May Allah shower him with His infinite mercy and eternalize his benefit.

II. About the Book

Lā Dhukūriyyah fī al-Fiqh or *There is no Male-Preference in Islamic Law* is an important treatise written by the great Moroccan legal scholar Muḥammad b. Qasim Al-Ta'wīl the mufti of Fes who taught at the Qarawiyyīn central mosque, the College of Shariah, and other important institutions. The book repudiates the common allegation of Islam possessing an inherently male bias to the detriment of women as a false stereotype promulgated by the enemies of Islam whose goal is to alienate Muslim women and others from their unique moral tradition. Islam's opponents have taken advantage of Muslim ignorance of their religion through colonization and its colonial advocates by undermining religious education, removing Islam from public life, and replacing it with secular law codes thereby transforming Muslim culture.

The book is divided into three chapters: (1) an introduction; (2) a chapter refuting the claim of the male bias in *fiqh*; and (3) a third chapter highlighting the secrets behind legal distinctions between men and women. The author explains in his introduction that the primary reason behind the confusion of Islam's critics is that they make the error of assuming that the role of Muslim jurists is to legislate, which results in men codifying laws that grant them advantages over women. Al-Ta'wīl rejects this misapprehension and clarifies that the job of the jurist is and has always been to merely elucidate scripture and disclose knowledge of God's predetermined judgments, as they believe them to be, based upon the interpretative tools at their disposal. If error happens, it is the result of the failure to properly comprehend the sources and the misapplication of legal principles, not from animus against women nor spiritual corruption. Among the topics covered in Chapter 2 are a woman's right to attend mosques, the role she plays in her own marriage, the financial

rights of a divorcee and widow, and the fate of the female apostate and sorcerer. The author highlights in each subsection cases of male jurists who supported the interests of women while their female counterparts stood in opposition of those same interests. This is done to underscore the fact that neither male nor female Muslim jurists are motivated by love of their own sex nor hatred for the other in their juristic deliberations. Rather, it is in pursuit of the strongest evidence before them and the pleasure of God that guide their scholarly endeavors. In Chapter 3, the author covers the many topics of controversy often held up as signs of Islam's patriarchal bias and putative misogyny. These include the discussions of polygyny, the wergild, testimony, leadership, divorce, inheritance, and man's charge over women. He weaves through each topic presenting the viewpoints of Islam's critics and then proceeds to refute each objection in detail.

In the present book, Muḥammad Al-Ta'wīl takes a unique approach to explaining the many matters of controversy surrounding the Islamic teachings on gender. Besides the book's provocative title, Al-Ta'wīl proceeds with minimizing the role that gender plays in legal distinctions between male and females. His claim is not that being a man or woman is completely void of consideration in laws which appear to privilege men over women but that the maleness or femaleness of actors are not integral to fitness and qualification for certain offices, benefits, and rights. Rather, the Shariah places greater emphasis on optimal capacity to carry out an act or fulfill a role than on the sex of the person given one or more duties. If sex is found to be a condition for fitness, it is largely coincidental or due to certain biological advantages that one gender has over the other. For Al-Ta'wīl, this is the presumptive rule for nearly all gendered injunctions which can be easily gleaned from information provided to us by scripture or known through experience. On the other hand, when it is impossible to discern the efficient cause for such

rulings, the expectation from believers is to merely submit to God's command without objection.

What this means is that Al-Ta'wīl supports his legalism with both divine command theory (also called 'theological voluntarism') and intellectualism. Like traditional Sunnis, he prefers to limit the authority of intellect by pegging it to efficient causes discernible from scriptural fiat. And when ratiocination is impossible, he defaults to voluntarism while not allowing for a putative wisdom to dictate the legitimacy or illegitimacy of a particular viewpoint.

His support for divine command theory is on display when he challenges rationalizations presented by Ibn Qayyim al-Jawziyyah and Mustafā Al-Zarqā for why a woman's wergild (*diyah*) is less than that of a man's, saying,

> Yet neither explanation is substantiated nor convincing. For femaleness is the *ratio legis* for cutting the woman's wergild in half. And maleness is the *ratio legis* for full payment of the wergild of a man regardless of the considerations upon which Ibn al-Qayyim and Al-Zarqā built the distinction. So, the male's wergild is 100 camels even if he happens to be a handicapped infant, a decrepit elderly man, a sick altruistic man (*yajūdu bi nafsi*) or a bankrupt person who benefits neither his family nor society with wealth or status. They won't be harmed by his murder. Similarly, the wergild of the woman will be half the wergild of a man even if she is more beneficial to her family and nation than one or one thousand men.

His support for divine command theory is further reinforced when arguing against women holding public office and other leadership positions in light of the prophetic tradition, "A people will not prosper who appoint a woman to head their affair." Responding to contemporary critics, he says,

> As for the claim that the lived reality belies it and that many countries in the world are led by women who have realized astounding prosperity, it is built upon a misunderstanding of "prosperity" and their belief that prosperity is economic, political, and military influence, industrial expansion, technological progress, and other externalities and ornamentation of the lower life with which they are enamored while not seeing their flaws and ills. Meanwhile, prosperity in the Islamic paradigm, the Qur'anic nomenclature, and the prophetic tradition means something else other than that. It means otherworldly prosperity, which is achieving paradise and its bliss along with eternal happiness therein. And when the prayer announcer (*mu'adhdhin*) calls in his loudest voice five times per day, "Hasten to prosperity", he is not inviting people to worldly prosperity that has no existence in mosques. He is only calling to prayer which qualifies them for otherworldly prosperity and eternal happiness which will be achieved only through obedience to God and fear of Him...

On the other hand, his intellectualism is on display when he adds rational explanations to scriptural arguments for why the unilateral authority to divorce has been given to men to the exclusion of women. Among the reasons he lists are:

> Firstly: The husband is the head of the household, its founder, and the one responsible for it...Secondly: The husband is the first one harmed and the biggest loser in the case of divorce. He loses materially, spiritually, economically, and socially. He loses his wife who he divorces and all he expended during the marriage, and he remains pursued for the entitlements of divorce like severance pay, the obligations of the waiting period, the expenses of children, and what by which he will marry anew...Thirdly: The husband is patient by his nature, in control of his nerves, calm in most situations, deliberate in making decisions, which are attributes by their nature push him to be deliberate and unhasty in the use of divorce except in rare circumstances, especially when we consider the material, spiritual, familial, and social ruin that will afflict him as a result of divorce...Fourthly and lastly: This is God's revealed law and religion

> that He revealed in His book and reinforced upon the tongue of His Messenger—God's blessing and peace on him—in his saying, "Divorce is only in the hand of the one who takes hold of the shin" (*...akhadha bi al-sāq*). And it is known that wherever God's revealed law manifests, its benefit and wisdom are revealed.

This waxing and waning between voluntarism and intellectualism may be perceived as contradictory. It, however, is consistent with Sunni legal theorizing wherein analogies are only constructed on analogues whose efficient causes are discernible. And when those causes cannot be discerned, the scriptural injunctions are unfit as analogues to have their judgments extended to new cases. Sometimes scholars disagree that a particular injunction contains a discernible *ratio legis*. So, when Al-Ta'wīl takes refuge in divine command theory, it is because he believes the scriptural injunctions to be unfit analogues. Therefore, the proper response for a believer is to comply without question or hesitation. What this means as well is that injunctions barring women from leadership roles and disparities in inheritance shares between certain men and women are to be surrendered to and accepted as fair and wise despite the clear inequality and presumed injustice. This is because inequality is not always synonymous with injustice. Al-Ta'wīl's approach when sufficient information exists for understanding God's wisdom for an injunction is to embrace the stated or discerned wisdom. However, if there is insufficient information for discerning God's wisdom, as believers, we are expected to embrace God's law despite the inability to explain why He places such expectations upon us. This is what faith demands. Some injunctions are immutable. Others are mutable. Our challenge today comes from the fact that many confuse the mutable with

the immutable and vice versa. This book, hopefully, will clear such confusion and provide support for a proper defense of the Islamic teachings from distortion.

III. My Work in this Book

In this work, I have endeavored to retain to the word and spirit of the author's original thought. Most footnotes are those of the author. When necessary, I have added a "translator's note" to clarify points made by the author which may not be easily understood by the average reader. I have completely rendered the original INFOPRINT (Fes) 2010 publication of the book in its entirety into English. I have attempted to correct the few minor typographical errors which appear in the original. I have also employed a standard academic transliteration style for Arabic expressions but have chosen to leave certain words which have become more familiar to English readers without transliteration. Those words include Allah, sunnah, hadith, fiqh, shariah, jihad, and others.

There is No Male-Preference in Islamic Law

DR. SHAYKH MUḤAMMAD AL-TA'WĪL

PREFACE

PRAISE BE TO GOD, The All-Knowing, The All-Wise, who brought creation into existence with His wisdom, obligated them to obey and worship Him, and elated them through His lifepath (*dīn*) and revealed moral code. (Does He who created not know, while He is the Subtle, the Aware?).[2] I testify that He is Allah with whom no other God exists. He has no partner and to Him is due all praise in the first and final life. Judgment is His. And unto Him you shall all return. And blessing and peace upon the master of all creation and the beloved of The Truth, our master Muḥammad, the one aided with authority and proof, dispatched with guidance, light, and the criterion, and [blessing and peace] upon his pure family, his righteous companions, and those who follow them in excellence until the Judgment Day.

Some people have problematized [what they call] "the male-bias in Islamic law" claiming to be motivated by the defense of women, their fair treatment, and highlighting the injustice they have encountered because of legislation influenced by patriarchy. It is a false claim whose goal is to undermine the jurists and instill doubt in the law. In these pages I have written brief comments of use to every seeker of truth which will silence every loudmouth and hypocrite displeased with [seeing] women and men living happily in the shade of Islam and under its divine laws.

I ask God, Be He exalted, to bring benefit by it to our men and women, to make it a treasure benefiting us on the day that neither wealth nor sons will be of avail but only those who come to God with a pure heart. I have divided it into an introduction and two points of discussion.

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2 Sūrah al-Mulk: 14

INTRODUCTION

THE MALE PREFERENCE in *fiqh* (Islamic law) is a satanic assertion that has started to become popular and find a path to certain hearts. And some suspect elements have begun circulating it at conventions, conferences, and in the media. It has penetrated the public statements of certain political figures and academics unaware of its gravity and its goal to distort the identity of *fiqh*, undermine its sanctity, and accuse it of partiality towards men, bias against and injustice to women, and it being the source of the oppression, tyranny, and marginalization they suffer at the hands of men, be they fathers, husbands, brothers, or non-relatives. It is a serious allegation, the goal of which is to incite Muslim women to abhor *fiqh*, rebel against it, and repudiate its rules. And that is after her being denied access to learn it in high school and the university, its removal from public life, elimination from the halls of the courts, distancing from parliamentary and conciliar assemblies and replacement with secular law codes. As a consequence, she sees no trace of it in her life or home to solve her problems to the point that it becomes easy to strip her of religion and to pose a barrier between her and its message which obligates her to nurture her children with a sound Islamic upbringing of which *fiqh* is to be afforded primary status in light of his saying—God's blessing and peace on him, "For whomever God desires good He gives knowledge of the religion."[3]

3 Al-Bukhārī reported, The Book of Knowledge, Chapter of ""For whomever God desires good He gives knowledge of the religion", #71. References: Al-Bukhārī cites this hadith in multiple chapters including #67, #3116, #7312.

THE FIRST POINT OF DISCUSSION

Rebutting this Allegation in Theory and Practice

ACCUSING ISLAMIC LAW of male-centeredness incites ridicule. And it clearly demonstrates the degree of embarrassment with which its advocates are stricken down and the compounded degrees of ignorance by which they are characterized: an ignorance of the understanding of *fiqh*, its origin, and the relation of the jurist to it; an ignorance of the applied reality of *fiqh* and its judgments; and an ignorance of its wisdoms and subtleties.

FIRST: IGNORANCE OF THE UNDERSTANDING OF FIQH

Accusing *fiqh* of male-centeredness is out of ignorance of the understanding of *fiqh*, its nature, origin, its relationship to the jurist, his role in it as well as the extent of its influence on him and his influence on it. This is because many people—especially those of them who have no connection to *fiqh*—believe or think that *fiqh* is a mere human endeavor influenced by the personal fancies of the jurist originating from his emotions, an expression of his opinions and ambitions, and a reflection of the personality of its practitioner as is the case with literature, art, and other artistic innovations. Furthermore, their view is that the jurist is the fashioner of *fiqh* and its legislator. Because of that they burden him with the responsibility of all that is unpleasing to them from *fiqh* and all rules that do not respond to their likes and fancies. You will notice them accusing him of strictness and puritanism sometimes and of bias and fanaticism at other times. At times they go as far as striking or imprisoning him, burning his books, banishing or killing him, as history has shown us. Mālik was scourged and paraded despite his high regard merely for his fatwa that "The divorce of one who is compelled is not

binding" because of ignorance about the reality of *fiqh* and the jurist's role in it. A great number of jurists throughout history have been tortured, imprisoned, and killed merely because of their fatwas that did not please those in positions of power or due to their refusal to give fatwas that accorded with their likes and demands.

The reality is that *fiqh* is a collection of scripture-based rules, some of which are divinely revealed from God—Most High—that the trusted spirit delivered to the heart of Muḥammad—God's blessing and peace on him—in the Book and Sunnah in the form of univocally expressed or pseudo-explicit statements. The jurist has no prerogative but to believe in and adhere to them if he finds nothing equal to or stronger that opposes them. And it is neither his nor another's right to reject them, to object to them, nor to amend them, because they are divine revelation from God. And He alone is the one who may amend or abrogate them. The believer has no choice upon hearing them to do anything more than saying, "We hear and obey" as God —Most High—said in *Sūrah al-Aḥzāb*: (It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their affair.);[4] and as He said in *Sūrah al-Nūr*: (So let those who disobey his orders beware, for an affliction may befall them, or a painful torment may overtake them.);[5] also in *Sūrah al-Nūr*: (The only response of the (true) believers, when they are called to Allah and His Messenger so he may judge between them, is to say, "We hear and obey." It is they who will (truly) succeed.);[6] and in Sūrah Yūnus: "When Our clear revelations are recited to them, those who do not expect to meet Us say (to the Prophet),

4 Sūrah al-Aḥzāb: 36

5 Sūrah al-Nūr: 63

6 Sūrah al-Nūr: 51

"Bring us a different Quran or make some changes in it." Say (to them), "It is not for me to change it on my own. I only follow what is revealed to me.").[7]

Similarly, there is another collection of rules from *fiqh* considered speculative, except that despite their speculative nature the jurist is not independent in framing them. He has neither freedom nor choice to legislate nor decide any laws he wishes and desires. Rather, he is bound by specific regulations which he may not supersede, limited standards he may not contravene, and an established point of reference that is not influenced by maleness, femaleness, or hermaphroditism, because the law is God's revealed moral code and His canon that expresses His rule—Most High—and will.

The jurist is a mere seeker of that unknown absent rule and a discloser of it. When he stumbles upon it on the strength of the scripture-based proofs erected over it, he proclaims it, adheres to it in his work, fatwa, decree, and teaching. It is attributed to him because he disclosed it, not because he legislated it. And when he does not stumble upon the ruling, he pauses saying, "I do not know" applying His—Most High—saying, (Do not follow what you have no (sure) knowledge of)[8] without being concerned of potentially being characterized as ignorant and lacking knowledge, because he values the responsibility casted upon the jurist as his description as one who is a signatory on God's behalf and communicator on behalf of His Messenger—God's blessing and peace on him. So, the similitude of the jurist in that regard is the similitude of precious minerals. He does not create them in the earth. Rather, he uncovers them. He cannot proclaim their existence until confirming the signs pointing to them. Therefore, legal theorists (*uṣūlīs*) and jurists define jurisprudence as

7 Sūrah Yūnus: 15

8 Sūrah al-Isrā': 36

"the knowledge of the scripture-based rulings connected with actions acquired from their unspecified proofs."

So, *fiqh* in the nomenclature of the Shariah is the mere knowledge of and acquaintance with those rulings. That is all, not the legislation of them. The jurist does not legislate a ruling because the ruling belongs to God alone as He said—Most High: (It is only Allah Who decides.).[9] This meaning is repeated with this wording in the Qur'an more than once in *Sūrah al-An'ām*: (The decision is only for Allah. He relates the truth, and He is the best of deciders.)[10] and in *Sūrah Yūsuf*: (It is only Allah Who decides. He has commanded that you worship none but Him.);[11] and in it (i.e. the sūrah) also: (It is only Allah Who decides. In Him I put my trust. And in Him let the faithful put their trust).[12] Similarly, it is repeated with other expressions that convey the same meaning. For instance, in *Sūrah al-Qaṣaṣ*: (All praise belongs to Him in this life and the next. All authority is His. And to Him you will (all) be returned).[13] In other words, judgment belongs only to Him, no one else. And in *Sūrah Ġhāfir*: (So the judgement is with Allah, the Most-High, the Grand.");[14] and in *Sūrah al-Qaṣaṣ*: (Everything will be destroyed except His Face. His is the judgement, and to Him you will be returned.).[15]

This repetition—with these useful expressions are to circumscribe in the strongest ways and most eloquent styles—so that all would know that the legislative authority belongs to God alone. There is no right to it for any person in a position of responsibility nor a jurist either individually or in partnership, as

9 Sūrah Yūsuf: 40
10 Sūrah al-An 'ām: 57
11 Sūrah Yūsuf: 40
12 Sūrah Yūsuf: 67
13 Sūrah al-Qaṣaṣ: 70
14 Sūrah Ġhāfir: 12
15 Sūrah al-Qaṣaṣ: 88

He—Most High—said in *Sūrah al-Kahf*: (They have no guardian besides Him, and He shares His rule with none).[16] And the role of the jurist is limited to searching for the ruling and disclosing it by limited means. Men and women regardless of the attributes of maleness and femaleness during their research are equal in adherence and restriction to them as well as in their pursuit of guidance from proofs and texts which are likewise free of maleness and femaleness and of their respective signs.

So, why after this do certain people insist upon accusing *fiqh* of male-centeredness? What this confirms is that there are male-focused speculative conclusions (*ijtihādāt*) that do not favor men and female-focused speculative conclusions that do not favor women. Similarly, there are female and male-biased points of agreement that favor women over men. The opposite is also true. An example of that is:

1. The right of the women to attend the mosque: 'Āisha—God be pleased with her—held that they (women) should be prevented from doing that saying, "If the Messenger of God—God's blessing and peace on him—saw from women what we have seen, he would have prevented them from the mosque just as the Children of Israel prevented their women..."[17] Meanwhile, Ibn 'Umar—God be pleased with him—held that women had a right to attend the mosques due to the hadith, "Do not prevent women from attending mosques, even though their homes are better for them."[18]

16 Sūrah al-Kahf: 26

17 *Muslim*. "The Book of Salat: Chapter of "Women Coming Out to the Mosques."" *Al-Bukhārī*: "The Book of the Adhan, Chapter of "The People Waiting for the Learned Imam to Stand." References: *Sahīh Muslim* #442; *Sahīh al-Bukhārī* #869.

18 *Abū Dāwūd*: "The Book of Salat: Chapter of "Women Coming Out to the Mosque."" References: *Sunan Abi Dāwūd* #567.

And in another hadith, "Do not prevent the bondswomen of God from the mosques of God."[19]

2. The right of women to guardianship in marriage: 'Āisha— God be pleased with her— said, "A woman has no right to initiate a marriage for herself nor for another woman" due to what she reported from the hadith, "Any woman who marries off herself without the permission of her guardian, her marriage is void, void, void!"[20] Al-Bayhaqī reported from 'Abd Al-Raḥmān b. al-Qāsim who said, "I was with 'Āisha as women would defer the marriage choices of their families to her. She would attend, but once the officiation of the marriage was left, she would say to someone in her family, "Officiate! A woman may not oversee the marriage agreement." And in one wording, "Women are not to perform marriages."[21] On the other hand, Abū Ḥanīfah holds it to be permissible for the adult woman to marry off herself. He, similarly, permits for her to sell her property. The supermajority adopted the view of 'Āisha, while the view of Abū Ḥanīfah is weak, because it is an analogy in contradistinction to explicit textual evidence which contradicts the aforementioned hadith and the hadith, "There is no marriage without a guardian",[22] as well as other hadiths and verses.

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19 *Al-Bukhārī*: "The Book of Friday #13." *Muslim*: "The Book of Salat, Chapter of "Women Coming Out to the Mosques."" *Abū Dāwūd*: "The Book of Salat: Chapter of "Women Coming out to the Mosque."" References: *Sahīh al-Bukhārī* #900; *Sahīh Muslim* #442; *Sunan Abī Dāwūd* #567.

20 Abū Dāwūd reported it [in] "The Book of Marriage: Chapter Concerning the Guardian." References: This is hadith #2083 in *Sunan Abī Dāwūd* which occurs with a wording slightly different from that reported by the author.

21 Look at *Ta'līq al-Mughnī 'alā al-Dāraqutni*, 3/226. References: Al-Dāraqutnī, 'Alī b. 'Umar. *Sunan al-Dāraqutnī wa bi dhaylihi Al-Ta'līq al-Mughnī 'alā al-Dāraqutnī*. Beirut: Mu'assassah al-Risālah, 2004. ('Abd al-Muhsin Al-Turki Edition) 4/324(hadith #3542).

22 Abū Dāwūd reported it [in] "The Book of Marriage: Chapter Concerning the Guardian" as well as Al-Tirmidhī [in] "The Book of Marriage: Chapter of

3. The right of the irrevocably divorced[23] woman to maintenance and housing: Fāṭimah bt. Qays who was one of the first emigrants held that such a woman has no right to either maintenance or housing. However, 'Umar—God be pleased with him—differed with her opining that she has a right to both maintenance and housing. Similarly, 'Āisha used to object to that opinion of hers. The Mālikīs said, "She has right to housing without maintenance." The Ḥanbalis adopted the view of Fāṭimah. And the Ḥanafis took the view of 'Umar.[24]
4. The right of the widow to housing: 'Āisha—God be pleased with him—did not believe they had a right to housing. However, Ibn 'Umar held that they do have a right to housing during the waiting period in light of His saying—Most High: (Those of you who die leaving widows should bequeath for them a year's maintenance without forcing them out.).[25]
5. The woman's right to inheritance when divorced irrevocably during illness:[26] 'Āisha was not of the view that such

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"There is No Marriage without a Guardian."" References: *Sunan Abī Dāwūd* #2085; *Sunan al-Tirmidhī* #1101.

23 Translator's note: An "irrevocably divorced woman" is one upon whom her husband has pronounced divorce for the third time. According to the Islamic teachings, reconciliation is not possible after a third divorce pronouncement. Hence, the couple are no longer married nor marriageable until the woman marries another man and is willfully divorced by him without any prior agreement with the first husband to initiate the divorce. The supermajority of jurists also hold that the second marriage does not legitimate the remarriage to the first husband unless the second marriage is consummated through penetration or intercourse.

24 *Al-Fatḥ* 9/480. References: See Al-'Asqalani, Ibn Hajar. *Fath al-Bārī Sharh Sahīh al-Bukhārī*. Riyadh: Dār Taybah, 2005, 12/222 (hadith #5321-5324).

25 Sūrah al-Baqarah: 240

26 Translator's note: What this means is that when the man falls seriously ill and it is feared he may die from it, his divorce of his wife while in this state does not prevent the woman from inheriting according to Imam Mālik due to the husband being accused of attempting to bar her from her right

a woman had a right to inheritance once the waiting period expires. However, Mālik held that she had a right to inheritance even if she happens to marry another husband.[27]

6. A wife's request to pay all that she owns to obtain a divorce (*khul'*): Al-Rabī' bt. Al-Mu'awwidh—God be pleased with her—held it to be permitted and valid. She happened to effectuate a separation from her husband on that condition. 'Uthman affirmed her in that. 'Ali b. Abi Talib, however, held it to only be permitted with the dower he gave to her.[28] The supermajority adopted the view of Al-Rabī' and the judgment of 'Uthman due to the generality of His saying—Most High: (...then there is no blame upon either of them concerning that by which she ransoms herself).[29]
7. The female apostate: 'Āisha—God be pleased with her—held it to be an obligation to execute her, while Ibn 'Abbas did not support her execution. The supermajority adopted the view of 'Āisha—God be pleased with her—due to the generality of his saying—God's blessing and peace on him, "Kill whoever alters his lifepath."[30] Abū Ḥanīfah adopted the

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to inheritance. If he recovers, however, the divorce is upheld, and she is no longer entitled to inheritance.

27 Look at *Al-Muḥallā*: 10/319. References: Ibn Hazm relates by way of Ibn Wahb: "A man from the people of knowledge told me that Rabī'ah said regarding the woman divorced thrice during illness: "She inherits from him even if she married ten husbands after him." And Malik and those who emulate him hold this view..." See Al-Andalusi, 'Alī b. Aḥmad b. Sa'īd b. Hazm. *Al-Muhallā bi al-Āthār fi Sharh al-Mujallā bi al-Ikhtisār fi Masā'il al-Shari'ah 'alā mā awjabahu al-Qur'ān wa al-Sunan al-Thābitah 'an Rasūl Allah*. Beirut: Dār Ibn Hazm, 2016, (Khalid Hassun Edition), 13/545.

28 *Al-Muḥallā*: 10/20. References: Al-Andalusi, 'Alī b. Aḥmad b. Sa'īd b. Hazm. *Al-Muhallā bi al-Āthār fi Sharh al-Mujallā bi al-Ikhtisār fi Masā'il al-Shari'ah 'alā mā awjabahu al-Qur'ān wa al-Sunan al-Thābitah 'an Rasūl Allah*. Beirut: Dār Ibn Hazm, 2016, (Khalid Hassun Edition), 13/536-545.

29 Sūrah al-Baqarah: 227.

30 Al-Bukhārī reported it [in] "The Book of Demanding Repentance from Apostates: Chapter on the Ruling of the Male and Female Apostate and

view of Ibn 'Abbas due to his—God's blessing and peace on him—prohibition against killing women.[31]

8. The witch: She is like the apostate. The Companions differed about executing her. The mother of the faithful Ḥafṣah supported her execution, and she executed a bondswoman of hers who bewitched her.[32] 'Uthmān b. 'Affān—God be pleased with him, however, did not support executing her. He also objected to what Hafsah did to her bondswoman.

These, then, are examples wherein female jurists stood against the interests of women or one of their rights while the male jurists stood therein with the interests of women and against the interests of men, which vindicates both *fiqh* and male and female jurists as practitioners of *fiqh* from male or female-centeredness and their premonitions (*hawājis*).

Sometimes a woman would consider the legal conclusions of a man to infringe upon the rights of women. So, she would check and debate him, and he would retract to adopt her opinion, or she would retract to adopt his opinion once evidence was presented and when one of them was convinced of the correctness of other's opinion. Or each would maintain their opinion and legal conclusion, and, in each instance, they would be seeking

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Demanding their Repentance." *Abū Dāwūd*: "The Book of Scriptural Penalties: Chapter of the Ruling of Those who Apostatize." References: *Sahīh al-Bukhārī* #6922; *Sunan Abī Dāwūd* #4351.

31 Al-Bukhārī reported it [in] "The Book of Jihad and Military Campaigns (*Siyar*): Chapter of "Killing Women during Wartime."" *Muslim*: "The Book of Jihad and *Siyar*: Chapter of "The Prohibition Against Killing Women and Children during War."" *Abū Dāwūd*: "The Book of Scriptural Penalties: Chapter of Killing Women." *Al-Tirmidhī*: The Book of *Siyar*: Chapter of What Has Come About the Prohibition Against Killing Women and Children." References: *Sahīh al-Bukhārī* #3015; *Sahīh Muslim* #1744; *Sunan Abī Dāwūd* #2668-9, 2671-2; *Jāmi' al-Tirmidhī* #1569.

32 Mālik reported it in the *Muwaṭṭa'*: "The Book of *'Uqūl* (life-prices): Chapter on What Has Come About Assassination and Witchcraft." References: *Al-Muwaṭṭa'* #1623-4.

the truth neither in defense of women nor waging war against men. They would also not do the opposite, defending men and waging war against women, in application of His saying—Most High: (The believers, both men and women, are guardians of one another).[33] And guardianship is the opposite of enmity. An example of that is [that]:

1. 'Umar was poised to limit the dowers of women to 12 *ūqiyahs*.[34] But a woman considered that to be an infringement upon women's right concerning the dower. So, she refuted him saying, "God gives to us, but you deny us! Did God—Most High—not say: (Even if you have given them a heap of gold, do not take any portion thereof)?"[35] So, he retracted to adopt her viewpoint and made his famous statement, "A woman is right, and 'Umar is wrong." 'Umar being the Commander of the Faithful saw no shortcoming in his acknowledgement of his error publicly and his retraction to the view of a woman, because he saw in that retraction a return to the truth and salvation from the error of his speculative conclusion. His excuse and proof for his decision was eagerness to follow the prophetic way which he alluded to by his saying, "If it—the high price of the dower—had been a source of honor in this life or piety with God then the most entitled of you to it would have been the Messenger of God. He never gave one of his wives nor his daughters more than 12 *ūqiyahs*."[36] So, he understood this repeated practical norm (*Sunnah*) to be the determination of the maximum dower. But the verse the woman presented as proof escaped him. Then, once he heard

33 Sūrah al-Tawbah: 71

34 Translator's note: 1 *ūqiyah* is equal to 40 dirhams. 40 dirhams is worth approximately $700-$800 depending on the current value of gold or silver.

35 Sūrah al-Nisā': 20

36 Look at *Mukhtaṣar Ibn Kathīr* 1/368. References: Al-Sābūnī, Muḥammad Ali. *Mukhtaṣar Tafsīr Ibn Kathīr*. Beirut: Dār al-Qur'ān al-Karīm, 1981, 1/369.

it, he retracted to adopt it and took comfort in it due it its explicit absence of limitation.

[Another example is] that it has been related that Ibn Mas'ūd—God be pleased with him— said, "May God curse those males and females who tattoo their bodies, those females who pluck out their eyebrows, and those who force gaps between their teeth for beauty those who alter God's creation." That [knowledge] reached a woman who was memorizing the Qur'an who considered it an infringement upon the rights of women to [self] beautification. So, she objected to it. He responded to her [saying], "Why should I not curse those who God has cursed while it is in the Book of God?" She responded, "I have read all between the two covers [of the Book] without finding in it what you claim." So, he said, "If you have read it, you have definitely found it. Have you not read: (Whatever the Messenger gives you, take it. And whatever he forbids you from, leave it)?"[37] She said, "Indeed." He said, "So the Messenger of God —God's blessing and peace on him—forbade it." She said, "I think your wife does it." He said, "Go and look." So, she went and saw nothing that corroborated her claim. She, then, came and said, "I did not see anything." He replied, "If it was true, I would refuse intimacy with her."[38] Then she retracted to adopt his view.

It had also reached 'Āisha—God be pleased with her— that Abū Hurayrah was relating that bad omens are attached to women, beasts, and homes. She became extremely indignant

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37 Sūrah al-Ḥashr: 7

38 *Al-Bukhārī*: "The Book of Attire: Chapter of The One Receiving Extensions." *Muslim*: "The Book of Attire: Chapter of the Prohibition of the act of the one who attaches extensions, the one who requests extensions, the one who does tattoos, and the one who requests a tattoo." References: *Sahīh al-Bukhārī* #5940-3; *Sahīh Muslim* #2125.

> and said, "I swear by He who revealed the Qur'an upon Abū al-Qāsim, he did not say it that way. Rather, the prophet of God used to say, "The people of the times of ignorance used to say, "The bad omen is attached to women, beasts, and homes." Then she recited, (No disaster strikes upon the earth or among yourselves except that it is in a register before We bring it into being).[39]

Similarly, it was brought to her attention that things which cut off one's prayer are dogs, donkeys, and women. So, she said, "You equated us with donkeys and dogs!" She continued, "The Prophet—God's blessing and peace on him—used to pray with me lying across in front of him prone like a corpse prepared for burial. And whenever he wanted to prostrate, he would make a motion towards my feet, and I would move them back and he would prostrate."[40]

Some might think that 'Āisha 's response—God be pleased with her—to these two hadiths is to defend and champion women and their honor. This, however, is not correct. 'Āisha—God be pleased with her—is more splendid and exalted than to reject noble prophetic traditions in defense and support of women. Rather, she rejected them because of what she knew, saw, and heard from Allah's Messenger—God's blessing and peace on him. And it is not permitted for anyone to abandon his own certainty in place of another's speculation. She explained that Abū Hurayrah in his narration of the hadith about bad omens omitted "The people of the time of ignorance used to say..." And he omitted part of the report even though it is permitted to do so according to legal theorists (*uṣūlīs*) and hadith scholars, except that it is not permitted according to them when the omission

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39 Sūrah al-Ḥadīd: 22

40 Abū Dāwūd reported it [in] "The Book of Salat: Chapter of "He who says: The woman does not cut off the Salat."" References: *Sunan Abī Dāwūd* #710-14.

pertains to what is mentioned in such a way that its meaning is altered by its omission, as happened here.

Similarly, there are rulings that have come in favor of women but not men as well as rulings to the benefit of men but not women, according to broad agreement. An example of the first is the allotment of inheritance to the maternal grandmother—the mother's mother—but not the grandfather—the mother's father, inheritance for the full blooded and the paternal sister who receive a full ½ while considering the full blooded or paternal brother mere residuaries who might be barred from inheriting anything at all.

An example of the second is the allotment of inheritance to the paternal uncle but not the paternal aunt, the sons of one's son but not the sons of one's daughter, and the right of the husband to [unilaterally] divorce and reconcile but not the wife. These rulings and others like them are points of consensus among male and female jurists. And there are no female jurists who defend women and demand that paternal aunts and daughters' sons be given shares of inheritance nor demand the wife be given the right to [unilaterally] divorce and reconcile.

Similarly, there are no male jurists who demand that the maternal grandfather be given an inheritance share or that the brother be given a predetermined share, because jurisprudence knows no bias towards a particular sex against another. It merely follows the evidence without diverging from it.

SECOND: IGNORANCE OF THE APPLIED REALITY OF FIQH

Accusing *fiqh* of male or female-centeredness is [out of]:

a. Ignorance of the applied reality of *fiqh*,
b. Ignorance of the plethora of positions and opinions that exist in favor of women against men, and

c. Ignorance of the many reduced obligations and exemptions from the material and physical burdens she has which have been casted upon the shoulders of men alone, like jihad and attendance at Friday and daily congregational prayers in confirmation of his saying—God's blessing and peace on him—about the topic of the Friday prayer, "The Friday prayer is a compulsory duty of every Muslim in congregation except for four: a slave, a woman, a child, and a sick person."[41] Similar is his saying regarding the matter of congregational prayers, "Do not prevent your women from mosques, even though their homes are better for them."[42] On the authority of 'Āisha—God be pleased with him, "I asked the Prophet's—God's blessing and peace on him—permission to join the jihad and he said, "Your jihad is Hajj."[43] And [it reads] in the hadith of Abū Hurayrah, "The jihad of the elderly and women are Hajj and Umrah."[44]

It is also ignorance of the equal treatment in rights and obligations it has guaranteed for her, departing from His saying—Most High: Surely for Muslim men and women, believing men and women, devout men and women, truthful men and women, patient men and women, humble men and women, charitable men and women, fasting men and women, men and women who guard their chastity, and men and women who remember Allah

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41 Abū Dāwūd reported it [in] "The Book of Salat: Chapter of The Friday Prayer for the Slave and Woman." References: *Sunan Abī Dāwūd* #1067.

42 Abū Dāwūd reported it. Its citation has preceded on page 15 or 16. Translator: Naturally, the author is referring to pages 15 and 16 of his original work. The hadith cited can be found in *Sunan Abī Dāwūd* #567.

43 Al-Bukhārī reported it [in] "The Book of Jihad: Chapter of "Women's Jihad."" References: *Sahīh al-Bukhārī* # 2875.

44 Al-Nasā ī reported it [in] "The Book of the Rites of Hajj: Chapter on "The Virtue of Hajj."" References: The full version of the hadith in *Sunan al-Nasā ī* #2626 is, "The jihad of the old, the young, the weak, and the woman are Hajj and 'Umrah."

often—for all of them Allah has prepared forgiveness and a great reward).[45] Similar are His sayings: (So their Lord answered them (saying): "I shall not waste the work of any worker among you be they male or female),[46] (Believers, male and female, are allies of one another. They enjoyed the right, forbid the wrong, establish the prayer, pay the poor-due, and obey God and His messenger)[47] as well as his saying—God's blessing and peace on him, "Women are simply the complementary halves of men"[48] in addition to other statements corroborating what we say.

The one who studies the foundations of law (*uṣūl al-fiqh*) and its particulars struggles to find a justification for this unjust allegation. Such a one will not find any trace of the alleged discrimination with the exception of a small limited number of particulars that one can count on one's fingers wherein the revealed law has introduced a distinction between men and women due to certain wisdoms and subtleties which have no connection to what some imagine of men being preferred over women or a diminution of women's value and a magnification of the value of men any more than to the extent that they are tied with the function of each of them, the role for which each is qualified, and the duties each is expected to perform in the community that unites them both or the home that gives them each shelter.

And a quick and short stroll in the wide expanse of Islamic jurisprudence is sufficient to refute these allegations, expose the flaws in these accusations, disgrace the intentions of their claimants, and expose their plots and evil objectives behind

45 Sūrah al-Aḥzāb: 35

46 Sūrah Āli 'Imrān: 195

47 Sūrah al-Tawbah: 71

48 Abū Dāwūd reported it [in] "The Book of Purification: Chapter About When Men Find Wetness in Their Dreams." References: *Sunan Abī Dāwūd* #236.

their accusations, broadcasts, and propagandizing about *fiqh* being male-centered.

In the field of *fiqh* of civic transactions the reader struggles to find any jurisprudential expression that inspires one to see the least difference between men and women. And one neither reads in its sources nor sees in its works any more than the shared portion between them and their unifying characteristic like 'seller', 'buyer', 'wage earner', 'employer', 'lessor', 'lessee', 'mortgagor', 'mortgagee', etc. You do not find a ruling favoring a man simply because he's a man nor the opposite which is what led legal theorists to state that maleness and femaleness are characteristics of a non-legal basis (*wasf ṭardī*) by which ratiocination is invalid in areas outside of court testimony, inheritance, guardianship, and the judiciary. And in restrictive boundaries that divine revelation has introduced there is no way to reject them nor a field to expand them and make them analogues. Similarly, it led others to state that women are included in the sound masculine plural in contravention of the demands of grammar and linguistics, out of eagerness to equate males with females in rulings including those whose passages are worded in the masculine gender.

In the field of aesthetics, *fiqh* has allowed for women to take delight in adorning gold, silver, and silk while forbidding men from doing the same in confirmation of his saying—God's blessing and peace on him, "Verily, these two are unlawful for the males of my nation."[49] And in the version of Ibn Mājah from the hadith of Ibn 'Umar—God be pleased with him, "The Messenger of Allah—God's blessing and peace on him—came out to us with a garment of silk in one of his hands and gold in

49 Abū Dāwūd reported it [in] "The Book of Attire: Chapter Regarding Silk for Women." References: *Sunan Abī Dāwūd* #4057.

the other and then said: "Verily, these two are unlawful for the males of my nation, lawful for their females."[50]

In the field of personal status law which is considered the square of the fight and battlefield of struggle between women and men the reader will be surprised to encounter an overwhelming flood of *fiqh* rulings against men and in favor of women despite their complaints and tears shed with claims of injustice. The examples of that are many:

- Despite the husband and wife's equal right to seek sexual gratification and satisfaction from the other, as God says—Most High: (They are a clothing for you and you are a clothing for them),[51] the husband is the one who pays the dower to the wife until she is satisfied as God—Most High—said: (And give the women [upon marriage] their bridal gifts graciously),[52] (So marry them with the permission of their families, giving them their dowers in fairness),[53] (So for whatever enjoyment you take from them, give them their due compensation as an obligation),[54] (If you have given one of them a great amount [in gifts], do not take [back] from it anything).[55]
- He is the one who pays the burdens of the wedding and reception of the marriage as he—God's blessing and peace on him—said to 'Abd Al-Raḥmān b. 'Awf, "Have a reception even with only one lamb."[56] And he is the one who bears the expenses of the wife and of the home, big and small, as He—

50 The *Sunan* of Ibn Mājah #3595: "The Book of Attire: Chapter of Silk and Gold for Women."

51 Sūrah al-Baqarah: 187

52 Sūrah al-Nisā': 4

53 Sūrah al-Nisā': 25

54 Sūrah al-Nisā': 24

55 Sūrah al-Nisā': 20

56 *Al-Bukhārī*: "The Book of Marriage: Chapter of the Wedding Reception "even with only one sheep." #5167, Al-Fath: 9/231

Most High—said, (Let them live where you live, according to your means. And do not harass them to make their stay unbearable),[57] (And on the father shall be their maintenance and clothing, in accordance with honorable norms).[58] Similarly, he—God's blessing and peace on him—said, "Feed them from what you eat and adorn them from what you wear."[59] And the matter did not end here. Rather, he permitted for her to take what is sufficient for herself when the husband falls short in maintaining her as has come in the hadith, "Take what suffices you and your child according to a common standard."[60] The husband is the one who serves his wife himself and acquires what is sufficient for her of servants, while she has no duty to do domestic service. And in the case of divorce the husband is the one who pays the severance and bears the costs of the waiting period, taking from His sayings—Most High: (For the divorced women there shall be a provision, in accordance with honorable norms),[61] (And grant them a severance, the rich according to his capacity and the poor according to his capacity, a severance according to the common standard as a right upon the doers of good)[62] and (And do not expel them from their homes).[63]

- Even the children are both hers and his. However, the one who bears their expenses and costs is the husband alone.

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57 Sūrah al-Ṭalāq: 6

58 Sūrah al-Baqarah: 233

59 Abū Dāwūd Reported it. "The Book of Marriage: Chapter Regarding the Right of the Woman over Her Husband." Translator: *Sunan Abī Dāwūd* #2144.

60 Al-Bukhārī reported it. "The Book of Judgments: Chapter of Judging Against an Absentee." *Abū Dāwūd*: "The Book of Leasing: Chapter Regarding the Man Who Takes His Right from Under His Hand." References: *Sahīh al-Bukhārī* #3825; *Sunan Abī Dāwūd* #3532.

61 Sūrah al-Baqarah: 241

62 Sūrah al-Baqarah: 234

63 Sūrah al-Ṭalāq: 1

> And in the case of divorce the mother keeps them by the authority of custodianship in light of his saying—God's blessing and peace on him, "You have a greater right to him as long as you do not remarry."[64] So, she alone enjoys living in their proximity and with them while taking them away from their father. And he retains no right to them nor connection beyond visitations, the cost of caretaking, and the cost of the expenses that the caretaker spends on her beautification, while the children only benefit from the remaining surplus.

So is it the right of a man, while observing all of these advantages a woman has, to claim that *fiqh* is female-centric, shows favor to women to his detriment, and for him to work towards mobilizing the male opinion to demand its masculinization in order to keep up with the times and sentiments of the civilized people who impose upon women the obligation to pay the dowry to men or present herself as a gift, while hoping from him to accept her and lose sleep in his domestic service, comfort, and participation in his difficulties and life troubles willingly and unwillingly, equally if she likes or dislikes to?

There is no doubt that this type of statement i.e. "the female-centeredness" or "male-centeredness" of *fiqh* from the Islamic paradigm burdens its proponent with the ruination of his faith (*dīn*), worldly life (*dunyā*), and hereafter if he does not repent or ask God's forgiveness from it, because it is objection to God, a rejection of His ruling, rejection of faith in His revealed law, and ignorance of His wisdom.

So Allah—Most High—exempted women from the financial burdens of family and casted it upon the shoulders of men alone out of eagerness to protect the health and comfort of women, [to shield them] from the routine of seeking wealth, and out

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64 Abū Dāwūd reported it. "The Book of Marriage: Chapter of "Who is more worthy of the child?"" References: *Sunan Abī Dāwūd* #2276.

of concern for her from assuming the problems involved with earning a living and facilitating her primary function of raising her children, her most cherished loved ones—i.e. the mothers and men of tomorrow and the future—to the point that they are not driven to neglect or abandon them in the custody of ignorant nannies. Everyone knows what children encounter in their hands and what they learn from them. Or she might be compelled to enter them into daycares (*riyāḍ aṭfāl*) which will increase her monetary burdens and additional problems in their transport and reception, in addition to the fact that were women to be burdened with the financial duties with which men are burdened, then difficult circumstances might compel her at times to neglect her honor (*al-tafrīṭ fī sharafihā*) and earn a wage through work that places her dignity (*ird*) at risk. For this reason, the Messenger—God's blessing and peace on him—forbade bondswomen from working (*kasb al-amah*) as is found in *Al-Bukhārī* so that they do not take refuge in doing that (i.e. undignified work).[65] And in the hadith of Rāfi' b. Khudayj [it reads], "The Messenger of Allah—God's blessing and peace on him—forbade the bondswoman from earning a wage until it is known from where it comes."[66] And a woman knows better than anyone the price being requested of her every time she knocks on one of the doors of employment or finds herself in one of the fields of employment (*awrāsh al-'amal*) or in an office under the authority of a heartless supervisor void of ethics. And the regularly occurring publicized complaints of sexual harassment conceal behind them great many things. Thus, it appears that

65 *Al-Bukhārī*: "The Book of Sales: Chapter of the Price for a Dog" with the wording, "Verily, the Messenger of Allah—God's blessing and peace on him—forbade the price of blood, the price of the dog, and the earning of the bondswoman." References: *Sahīh al-Bukhārī* #2238.

66 Abū Dāwūd reported it. "The Book of Leasing: Chapter of the Earning of Bondswomen." References: *Sunan Abī Dāwūd* #3427.

exempting women from the financial burdens and casting them on the shoulders of men is a point of boast of Islam and one of its superior advantages over others. And it is a position that calls men before women to take pride in it, to defend it, and to cling to it tenaciously instead of nagging about it and looking towards others due to what it guarantees of dignity for one's mother, daughter, sister, aunt, and the dignity of one's family and community (*ummah*), because the dignity of a woman is the dignity of all, while degradation (*ibtidhāl*) is degradation for all.

This concerns the founding of the family and its expenses. And when the researcher moves beyond this phase and directs himself toward the relationship between the spouses and the problems that could occur between them and the positions of *fiqh* in relation to them, he will find that they weigh heavily between championing the wife, taking her by the hand, and helping her to traverse and transcend their problems, and between treating them equally and dealing with each of them with the same justice, fairness, and equal treatment with which the other is dealt. And the best examples of that are:

1. What is Determined by *Fiqh* Regarding One's Treatment of Women

   It emphasizes the obligation of treating them courteously and forbids offending and harming them, a decisive prohibition based upon His sayings —Most High: (And treat them courteously. Then if you dislike them, perhaps you only dislike one thing while God will make much good in it),[67] (And do not inflict harm upon them in order to bring constraints upon them),[68] and (And do not hold onto them

67 Sūrah al-Nisā': 19

68 Sūrah al-Ṭalāq: 6

for harm in order to transgress. Whoever does that has wronged himself).[69] And He forbade taking any part of their dowers, based upon His sayings—Most High: (And do not harass them in order to take away part of what you have given to them unless they commit a clear indecency),[70] and (And it is not lawful for you to take from them what you have given them unless they both fear that they will not remain within Allah's boundaries. Then if you all fear they will not remain within Allah's boundaries, then there is no objection against them regarding what she gives as ransom for it).[71] Even in the case of infidelity, it does not permit for him to keep her while harming her in order that she'd offer something in ransom [for her divorce]. And it gives him a choice between mutual imprecation (*li'ān*),[72] divorce, and keeping her with courtesy, according to the standard view in the Mālikī School, based upon the general sense of the previous verses concerning the courteous treatment and the prohibition against keeping her to inflict harm.

And when she is offended and harmed, *fiqh* grants her the full right to divorce herself if the harm happens in a manner unapproved by the revealed law even if it happens only once.

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69 Sūrah al-Baqarah: 231

70 Sūrah al-Nisā': 19

71 Sūrah al-Baqarah: 229

72 Translator's note: Mutual imprecation refers to a ritual performed by the husband and wife with the purpose of exonerating the wife from the accusation of adultery made by the husband when he suspects or claims to have found her with another man. If the wife refuses to swear the oaths, she will be stoned for adultery, and if she is currently pregnant and her husband denies paternity, the baby will not be ascribed to him. If she, however, swears the oaths, she will be legally exonerated. In either case, the imprecation will be considered an irrevocable divorce barring the two from ever remarrying in the future. On the other hand, if the husband refuses to swear the oaths after making a public accusation against his wife, he will be given 80 stripes as a punishment for the false accusation. This ritual is explained in Q 24:6-9.

And *fiqh* does not stop at this. Rather, it extends ease to her in this topic inasmuch that it does not burden her with proving harm according to a judicial standard of eyewitness testimony. It considers ear-witnessing, even from women, neighbors, and servants sufficient for her. Similarly, it has expanded the sphere of harm warranting divorce including in its options: revilement of her or of her father, his refusal to speak to her, facing away from her while in bed, feeding her unlawful food, preferring her cowife over her as well as striking her. And all of that is out of *fiqh's* eagerness to guarantee her happiness and dignity amid a new family with whom the ties of family and blood may not unite her.

And in the case where one of them is defiantly disloyal (*nushūz*)[73] towards the other, exhibits rebelliousness, neglects duties and the like, falls short of rights owed the other or refuses to fulfill them, *fiqh* counsels to admonish the disloyal one among them (*nushūz*)—husband or wife, then to sever conjugal relations, and then if none of those avails to transfer to light hitting that does not impair, if benefit is hoped to result from it. Otherwise, it is forbidden, taking direction from this sequence (*tartīb*) [outlined] in His saying—Most High: (And those women whose *disloyalty* you fear, admonish them, abandon them in the beds, and strike them)[74] and applying the legal maxim that, "Every act that fails to realize the aim for which it was legalized is not permitted to initiate" (*kullu*

73 Translator's note: Scholars differ about the word '*nushūz*' and what sort of action from a wife or husband constitutes it. Some exegetes say that any act of disobedience on the part of the wife towards the husband is *nushūz*. This, however, doesn't seem to be consistent with its use in the Qur'an since a husband may also be guilty of *nushūz*, while there is no legal obligation upon him to obey his wife as she is expected to obey him. In my view, *nushūz* is a reference to an act of disloyalty, indifference, or sexual indiscretion that does not reach the level of adultery.

74 Sūrah al-Nisā': 34

fil lā yuḥaqqiqu al-hadafa min mashrūʿiyyatihi lā yajūzu sharʿuhu). And while this verse speaks about the *disloyalty* of the wife and disciplining her but not that of the husband which is part of what has made some accuse *fiqh* of male-centeredness with others expressing the legislative void in this topic, our male—not female—jurists equated between the disloyalty of the husband and the disloyalty of the wife with consideration of the fact that *disloyalty* in itself is a sin deserving of discipline and a deed whose case represents a threat to the stability of the marriage regardless of who the one guilty of *disloyalty* is. For that reason, a limit must be set for it and the rein of the *disloyal* one must be curbed with the methods expressed in the verse with a fine distinction, which is that the husband undertakes the discipline of the wife himself and in her home as a shield for her and to preserve her reputation, dignity, and the dignity of her husband all at once. For the husband with ardor towards his wife is not pleased to have her brought before the court. And his ego does not permit for anyone to touch her, especially not to strike her,[75] whatever the circumstances and reasons may be.

As for the husband who is disloyal with respect to his wife who transgresses against her, the judge is the one who will take her place in disciplining him. He will admonish him firstly. Then if it avails not, he will order her to avoid conjugal relations with him. Then if it does not avail, the judge will punish him with striking according to his discretion (*ijtihād*) in the presence of people in order that it is more

75 Translator's note: Muslim scholars throughout Muslim history have taken the expression '*w-dribuhunna*' (strike them) in Q 4:34 literally. They also considered striking the wife in the face or head, leaving marks, breaking bones, and the drawing of blood to be forms of abuse for which the husband can be prosecuted, punished, and sued by his wife. They, further, considered it a serious crime for a husband to strike his wife who is not guilty of the sin of *nushūz*. (See previous note for a discussion of *nushūz*).

repelling and discouraging to others. And [it reads] in the *Mukhtaṣar of Khalīl*, "And due to his transgression, the judge shall constrain him."[76]

And in the case when *disloyalty* is feared before it occurs, *fiqh* advises one to take refuge in compromise and pursuing the consent of the one of the two of them from whom *disloyalty* is feared, as God said—Most High: (And if a woman fears from her husband disloyalty or loss of interest, then there is no objection against them forming a compromise. And compromise is good). And that is by having her surrender to him some of her rights or giving up part of her wealth whenever the wife happens to be the one who fears *disloyalty* from her husband. And the Mother of the Faithful Sawdah—God be pleased with her—surrendered her right to the allotment of nights, giving her turn to 'Āisha—God be pleased with her— when she grew old and feared the Messenger of Allah—God's blessing and peace on him—would divorce her.

On the authority of Ibn 'Abbās—God be pleased with him, "Sawdah feared that the Messenger of Allah—God's blessing and peace on him—would divorce her. So, she said: "O Messenger of Allah! Do not divorce me! Give my day to 'Āisha!" So, he did, and this verse was revealed: (And if a woman fears from her husband disloyalty or loss of interest, then there is no objection against them forming a compromise. And compromise is good)[77] to the end of the verse. Ibn 'Abbas said, "So anything upon which they compromise is permitted." Rāfi' b. Khudayj also formed a compromise with his first wife to relinquish her right to sharing nights (*qasm*) and for him to show partiality towards her cowife. So, Al-Bayhaqī and Ibn Abū Ḥātim reported that Rāfi' b.

76 Look at Al-Dasūqī: 2/343

77 Sūrah al-Nisā': 128

Khudayj had a wife with whom upon growing old he married a young woman towards whom he showed partiality. So, she begged him to divorce [her]. He pronounced divorce on her and then granted her time (*amhalahā*) until on the verge of completing the waiting period (*kādat taḥillu*) he reconciled with her but resumed his partial treatment toward the younger wife over her. She, then, begged him to divorce [her again]. He, then, said, "As you wish. Only one divorce pronouncement remains. If you'd like, you can stay with me despite the impartial treatment you see. And if you'd like, I will part ways with you." She said, "No! I would rather stay despite the impartial treatment." So, he kept her in that condition. And that was her compromise. And Rāfi' did not hold it to be a sin for her to consent to remain with him despite the impartial treatment he showed toward her."[78]

Contrarily, when the husband is the one who fears *disloyalty* from her, he has the right to pursue her satisfaction by surrendering some of his rights or for him to give her part of his wealth in the same way that she would give to him to satisfy him as part of the rule of equal treatment. Similarly, in the case of discord and extreme disagreement, *fiqh* determines that an arbiter from her family and an arbiter from his family will be chosen, as God says—Most High: (And if you fear the rupture of ties between them, then appoint an arbiter from his family and an arbiter from her family. If they desire compromise, God will bring harmony between them. Verily, Allah is ever knowing, fully aware).[79]

2. The Flaws in Spouses that Establish the Right to Repudiation

78 *Mukhtaṣar Ibn Kathīr*: 1/445; *Al-Jāmi' li Aḥkām al-Qur'ān of Al-Qurṭubī*: 5/259

79 Sūrah al-Nisā': 35

Fiqh gives the right to a wife to reject a husband due to prior or recent flaws. And it prevents a husband from rejecting a wife due to recent flaws, considering them an affliction that has descended upon him which he must either bear or divorce, while paying the dower and its supplements to the wife. Similarly, it prevents him from rejecting her due to multiple flaws such as blindness, balding, and black skin[80] unconditionally. And it gives her the right to reject him due to black skin even if she did not stipulate that he lack it. And in the case of disagreement over genital defects and virginity, in particular, *fiqh* determines that the woman is to be given credence when negating the presence and absence of the defect as well as its preexistence. It inhibits her from being examined by doctors as a means to protect her dignity. And concerning this Ibn 'Arafah—who was a male jurist—says, "The free woman shall not unclothe for a such a matter." However, once women begun to exploit this [presumption of] trustworthiness assigned to them by *fiqh* and allowed for themselves to commit indecencies confident they would not be disgraced, the position of jurists changed towards them. And those later [jurists] issued fatwa that she be examined by [other] women, in application of the principle, "New verdicts will be passed for people corresponding to the degeneracy they introduce" as stated by 'Umar b. 'Abd Al-'Azīz. And it is

80 Translator's note: The aesthetic judgment that jet black skin is a defect appeared to be a common notion among Mālikīs of North and Northeast Africa and Andalus (Islamic Spain) where we can confidently assume were populations with predominantly light and pail white skin color. Mālikīs of the Sahel, apparently, did not share these aesthetic cultural assumptions. The author, being Moroccan, clearly shares this assumption but is also committed to uncritically conveying a historical perspective wildly held by North African Mālikīs influenced by the Egyptian Azhari sector of the school. I speak about many of these issues in my book entitled *The Negro in Arab Muslim Consciousness.*

a good gesture *fiqh* extends towards women. So, despite the dispute being between men, it referred the matter to women sufficing with the testimony of women in this topic in spite of its gravity. It also did not permit for her to be examined by men except for when it is impossible to find women. And it did not order that she be examined by [both] men *and* women in order to prevent prejudice, because *fiqh* makes no distinction between men and women.

None of these imported trifles whose goal is to undermine the solidarity that Islam has anchored between the members of society in its principles and instructions which aim for truth, justice, and fairness appear to the minds of jurists regardless of the sex of the one who happens to be correct. Hence, we see the jurists finding no fault in judging in favor of women to man's detriment and granting her credence in her allegations against him without burdening them to prove that as will become clear in the forthcoming examples [which include]:

- Her claim of the expiration of her waiting period in order to free herself from his right to take her back when the divorce is revocable.
- Her claim of the continuation of her waiting period in order to enjoy the rights of a divorcee and to inherit from him in the case of death when the divorce is revocable.
- Her claim of menstruation when divorce is pronounced in order to compel the husband to take her back despite his own desires, in confirmation of His saying —Most High: (And it is not lawful for them to conceal what God has created in their wombs if they believe in God and the Last Day).[81] God has given them the trust over what their wombs contain of menstruation, while the trustee

81 Sūrah al-Baqarah: 228

is to be affirmed in what he claims. For that reason, she is affirmed regarding the expiration of the waiting period, its continuation, and concerning menstruation in the three aforementioned cases.

- Her claim that intercourse happened upon the confirmation of seclusion in order to take her full dower if he divorces her. And she is not to be examined by doctors when she is a virgin.
- Her claim of not receiving maintenance and non-payment of the dower by the husband in multiple cases.

These examples are a few from many [cases]. They represent only a dot in a sea of *fiqh* rulings that champion the woman because the right is on her side, not because she is a woman. So, when *fiqh* champions the man in some areas because the truth is on his side, it does not champion him because he is a man. So, the truth is what guides (*rā'id*) *fiqh*. Justice is its goal. And masculinity and femininity are not among its scales and standards in its positions and rulings except where the truth happens to be on the side of one of them or wisdom demands that there be a distinction between the two of them. So, there is no call for agitating men or women whenever the ruling is not in their favor. And there is no justification for accusing *fiqh* of being biased towards one of them. And the duty of all is to say, "We hear and obey!" and not to say as the Jews said, "We hear and disobey!"[82] And let them remember His sayings—Most High: (So, No! By your Lord! They will not believe until they make you judge in what happens between them and then do not find within themselves uneasiness about what you judge and surrender

82 Translator's note: This is a direct reference to Q 4:46 as well as other Qur'anic verses that point to the transgressions of the Children of Israel and their ingratitude to God for the many blessings bestowed upon them.

completely),[83] and (They will say: "We believe in Allah and His Messenger", then a group of them will turn back. Those are not believers. And when they are called to have Allah and His messenger judge between them is when a group of them turn aside. And if the truth had been in their favor, they would come to it submissively. Is there sickness within their hearts or are they in doubt? Or do they fear that Allah and His messenger will be unjust toward them? Nay! Those are the wrongdoers. The reply of the believers when they are invited to have Allah and His messenger judge between them is to say: "We hear and obey!" And those are the successful).[84]

83 Sūrah al-Nisā': 65

84 Sūrah al-Nūr: 47, 48, 49, 50, 51

THE SECOND POINT OF DISCUSSION

Clarifying the Ruling and Subtleties of Fiqh Regarding the Judgments that Distinguish Between Men and Women

ACCUSING ISLAMIC JURISPRUDENCE of male-centeredness shows ignorance of the subtleties of *fiqh*, its far-reaching wisdoms, and its noble objectives concerning the issues wherein it distinguishes between men and women. It has not treated them equally in rulings, rights, and obligations. And they are multiple and various wisdoms some of which have been previously alluded to during the explanation of the secret in exempting women from financial burdens towards themselves and casting them upon the husband, father, and sons. And in this passage, we point to other wisdoms related to the issues wherein women complain—and complaints are made in their name—and they are misled about them with the aim of exploiting them in propagandistic pursuits, insulting their religion and heritage, and polluting the purity of their family, society, and community, to the benefit of their enemies and the enemies of her nation. We make specific mention of polygyny, divorce, inheritance, testimony, guardianship, the wergild, and charge. And we will dedicate a specific title to each one.

POLYGYNY

Why 'polygyny' but not 'polyandry'? If women have a need for sexual intercourse as is the need of men, then why are men allowed to have a multiplicity of wives, but a woman is not allowed to have a multiplicity of husbands? It is an old question that does not represent any progress to the extent that it represents a fallen regression and invitation to a bestial animalistic life. And

it is a question the ancient crypto infidels posed. Their heirs pose it again with impudence and boldness free of shame and morals in a society whose inhabitants have professed adherence to Islam for many centuries, while being ignorant of or feigning ignorance of the wisdoms and subtleties behind the principle of allowing polygyny and barring polyandry among which are:

1. The preservation of blood ties, since having husbands share a single wife leads to ignorance of whose blood tie of theirs from whom her pregnancy is. And it leads to each of them shirking his responsibility towards it, flight from its care, and abandoning her to bare the burdens of rearing and caring for it.
2. That characteristic of polyandry is for there to be competition (*tazāḥum*) and fighting (*taqātul*) between them over the woman when each of them has a need for her at the same time.
3. Goodwill towards the woman herself and her protection from what to which is possible for her to be exposed from disputing partners, each of whom desires her for himself.
4. Protection from sexually transmitted diseases. The contact of [many] husbands with a single wife continuously is the most likely way of contracting many diseases that typically afflict fornicators and adulterers, male and female.
5. The goal of marriage is to increase progeny and the population as he—God's blessing and peace on him—said, "Intermarry, you will grow in progeny. For, verily, I will compare your numbers against other nations on the Day of Resurrection."[85] And it is a goal which can be realized through polygyny but cannot be realized through polyandry,

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85 Abū Dāwūd reported it [in] "The Book of Marriage: Chapter Concerning the Prohibition Against Marrying Off Women Who Have Not Given Birth." References: The hadith is reported in the *Sunan* of Abū Dāwūd #2050 with slightly different wording than what is provided by the author.

because when a woman is impregnated from one person, it is not possible for her to be impregnated from another. And, when one of the man's four wives happens to become pregnant, it is also possible for the others to become pregnant.

6. Polygyny is the most likely place of the absorption of the surplus of women and gives opportunity to many of them to enjoy a happy married life and familial stability. She does not chase anyone away. Nor does anyone chase her away. Meanwhile, polyandry inverts the result and exacerbates the occurrence of spinsters and the increased gravity of their problems. And there is a big difference between the two solutions: an Islamic solution that eliminates and besieges the crisis and an animalistic godless (*jāhilī*) solution that exacerbates the crisis and increases its complications. God the Great speaks the truth when He says: (So, is He who guides to the truth more deserving of being followed or he who finds no way until he is guided. So, what is with you? How do you judge?).[86]
7. That the sexual passion of men is more intense than that of women. And in this regard Ibn al-Qayyim says while refuting those who say that the sexual passion of women is more intense than that of men, "As for he who says that the sexual passion of women is greater than the sexual passion of men, what he says is not true. The source of passion is heat. And where does the heat of the woman stand in comparison with the heat of a man? Evidence of this can be found in his saying: "And part of what proves this is that if a man has sex with his wife, it is possible for him to have sex with another [woman] immediately. The Prophet—God's blessing and peace on him—would make rounds among his wives in a single night. Solomon made rounds over 90 wives in a single

86 Sūrah Yūnus: 35

night. And it is known that he had a passion and fire for sex toward each wife, while when a man finishes with a woman, her passion subsides and her libido is broken (*inkasrat nafsuhā*), and she does not seek gratification with another [man] at that moment.[87] So, the wisdom of the divine decree, the revealed law, the creation, and command all harmonize. And to God belongs all praise."[88]

THE WOMAN'S WERGILD

The schools of Islamic jurisprudence agree that the wergild (*diyah*) of a woman is half the wergild of a man's, in light of hadiths and traditions that exist on the topic. One of them is the hadith of 'Amr b. Shu'ayb from his father from his grandfather that he—God's blessing and peace on him—said, "The life-price (*'aql*) of the woman is similar to the life-price (*'aql*) of the man until it reaches one third of his wergild (*diyah*)."[89] The hadith of Mu'ādh b. Jabal [states] that he—God's blessing and

87 Translator's note: This is clearly a pseudo-scientific assumption made by Ibn al-Qayyim and endorsed by the author. Embracing this viewpoint demands that one accept that men in their sexual prowess can be analogized with the Prophet Muḥammad—God's blessing and peace on him. This analogy is misplaced in my view. Additionally, many women would strongly disagree with this assertion. It may be true that a woman after sex with one man may not desire to have sex with another. However, that may equally be the function of her fidelity to her partner than proof that she has been completely gratified.

88 *I'lām al-Muwaqqi'īn*: 2/56. References: The full quote can be found in the section of Ibn Qayyim's work in the section entitled, "The Wisdom of Permitting Multiple Spouses for Men but not Women" (*al-hikmah fī ibāhah al-ta'addud li al-rajul dūn al-mar'ah*)." Al-Jawziyyah, Ibn Qayyim Muḥammad b. Abī Bakr. *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*. Beirut: Dār Ibn Hazm, 2013, p. 374-5.

89 Al-Nasā'ī reported it [in] "The Book of the Sanctity of Life: Chapter on the Life-Price of the Woman." *Al-Dāraquṭnī*: "The Book of Scriptural Penalties, Wergilds, and Other Things." References: *Sunan al-Nasā'ī* #4805; *Sunan al-Dāraqutnī* #3128

peace on him—said, "The wergild of a woman is half the wergild of a man."[90] And it is what the opponents and enemies of Islam have taken as proof to attack Islam and accuse it of being biased toward men while belittling women. It is what simultaneously made the scholars of Islam search for the secret and wisdom in this distinction between men and women with respect to the wergild and made the wergild of women half the wergild of men.

Some of them opined that the wergild constitutes a monetary value [of the person], whereas monetary values differ according to the disparity in the importance and utility of the thing. And since the utility of a man is more significant, it would not be just to give equal payment for his wergild and for the wergild of a woman. So, wisdom dictates making her wergild half of his wergild. In this regard Ibn al-Qayyim says,

> As for the wergild, since women are more imperfect than men and men are more useful than they are—being that they occupy the religious offices, government posts (*wilāyāt*), inroads, jihad, land constructions (*'imārah al-arḍ*), and trades without which the interests of the world would not be complete, in addition to the defense of the worldly and religious [affairs], the value between the two parties happen to not be equal. And *this* is the [function of the] wergild. For, the wergild of the freeman, undoubtedly, approximates the value of the slave and other property. So, the wisdom of the lawgiver demanded that He make her value half of his value due to the disparity between the two of them.[91]

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90 Al-Bayhaqī reported it [in] "The Chapter of What Has Been Transmitted About the Wergild of the Woman." References: *Al-Sunan Al-Kubrā* #16305.

91 *I'lām al-Muwaqqiīn*: 2/112. Translator: The original quote can be found in the section entitled, "The Wisdom in Treating Women and Men Equally in Certain Laws but Not Others" (*al-hikmah fī musāwāt al-mar'ah wa al-rajul fī ba'd al-ahkām dūna ba'd*). Al-Jawziyyah, Ibn Qayyim Muḥammad b. Abī Bakr. *I'lām al-Muwaqqiīn 'an Rabb al-'Ālamīn*. Beirut: Dār Ibn Hazm, 2013, p. 425.

On the other hand, others hold that the secret in this distinction is that the financial harm suffered by the family of the murdered man is greater than the financial harm suffered by the murdered woman's family. In this regard, Mustafā Al-Zarqā' (1904-1999) says after some comments,

> The summary is that the financial obligations of maintenance always or most likely fall upon the man according to Islam's moral code. For that reason, the financial harm on the guarantors (*awliyā'*) of the murdered man is greater than the financial harm in the case when the murdered person is a woman. And perhaps this is the reason for the difference in the wergild between men and women.[92]

Yet neither explanation is substantiated nor convincing. For femaleness is the *ratio legis* for cutting the woman's wergild in half. And maleness is the *ratio legis* for full payment of the wergild of a man regardless of the considerations upon which Ibn al-Qayyim and Al-Zarqa' built the distinction. So, the male's wergild is 100 camels even if he happens to be a handicapped infant, a decrepit elderly man, a sick man in the throes of death (*yajūdu bi nafsi*) or a bankrupt person who benefits neither his family nor society with wealth or status. They won't be harmed by his murder. Similarly, the wergild of the woman will be half the wergild of a man even if she more beneficial to her family and nation than one or one thousand men.

And maybe this is the reason for Sa'īd b. al-Musayyab's response when asked about such a situation, "It is the Sunnah, my nephew!" He deemed it sufficient to affirm and confirm the ruling without burdening himself with searching for its *ratio legis* despite the questioner's query. According to the *Muwaṭṭa'*, Rabī'ah b. Abū 'Abd Al-Raḥmān said to Sa'īd b. al-Musayyab,

92 *Fatāwā al-Zarqā*, p. 389. References: Al-Zarqā, Mustafā. *Fatāwā al-Zarqā*. Damascus, Beirut, and Jeddah: Dār al-Qalam, Dār al-Shāmiyyah, and Dār al-Bashīr, 1999, p. 389.

"What is the value of a woman's finger?" He said: "Ten camels." I said: "What about two fingers?" He said: "Twenty camels." I said: "What about three fingers?" He said: "Thirty camels." I said: "Then, what about four fingers?" He said: "Twenty camels." I said: "After her wound and affliction greatly increased, her life-price decreased?!!!" Saʿīd said: "Are you from Iraq?" I said: "Rather, [I am] a scholar pursuing confirmation or an ignorant person learning." He said: "It is the Sunnah, my nephew."[93]

This is him alluding to the fact that it is inappropriate to search for the wisdom beyond this distinction between the male and female with respect to the ruling. For that reason, he objected to the questioner asking about the wisdom of that, by merely saying to him, "Are you from Iraq?" He only answered him after confirming that he was merely a scholar seeking confirmation of the ruling or an ignorant person seeking to learn. And when he answered him, he saw it sufficient to affirm the ruling without mentioning its wisdom. Such is an allusion to the fact that its wisdom is unknown. And there is nothing strange about that. Legal theorists have expressly mentioned the permissibility of assigning a *ratio legis* to something whose wisdom is unknown as when Al-Subkī said, "And it is permitted to assign a *ratio legis* to something whose wisdom has not been disclosed." As is here, maleness is a *ratio legis* for the obligation of the full wergild, while femaleness is a *ratio legis* for dividing the wergild into half, while the wisdom behind that is unknown. And the lack of knowledge of it does not impair the soundness of the ruling and the obligation to employ it in worship.[94]

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93 Mālik reported it in the *Muwaṭṭa'*: "The Book of Life-Prices: Chapter Concerning What Has Been Transmitted About the Price for the Loss of Fingers." References: *Muwaṭṭa' al-Imām Mālik* #1613.

94 *Jam' al-Jawāmi' bi Sharḥ al-Maḥallī*. References: The quote from Ibn al-Subki is "*wa yajūz al-ta'līl bi mā lā yuttala'u 'alā ḥikmatihi*." The author's reference is

TESTIMONY

Testimony is one of the issues about which women complain and consider to be diminution (*intiqāṣ*) of their value and belittlement (*ṭa'n*) of their qualification and fitness. And the opponents and enemies of Islam exploit it in propaganda against Islam and the allegation of it being biased towards men and belittling women when their testimony is rejected in non-financial matters and treated in financial matters as half of the testimony of men. They encourage women to raise their voices with complaint and to register injustice (*taẓallum*). They extend to them material and psychological support insisting on the demand for absolutely equal treatment between men and women in testimony, which is part of what has made some Muslims and hypocrites align with the opponents of Islam. They act daringly against God and His messenger. And they demand the cancelation of the distinction between the two sexes in testimony. Unfortunately, they do not grasp the gravity of their position against their religion and their Islam. And they justify that with multiple excuses, among which are:

Firstly: what some of them circulate on the internet in opposition to the debt verse [which is]: (So, if two men are not available, then a man and two woman from those with whom you are satisfied among witnesses so that if one of them misapprehends, the other may remind her).[95] [They argue that this opposes] His saying in another verse from the same Noble Qur'an that if death comes to one of us, we are to call to witness two upright people from among us, wherein He makes no mention of, "a male" nor "two males." [According to them], He also does

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to Al-Banānī, Muḥammad b. al-Hasan. *Hāshiyah al-Banānī 'alā Sharḥ al-Jalāl Shams al-Dīn Muḥammad b. Aḥmad al-Mahallī 'alā Matn al-Jam' al-Jawāmi' li al-Imām Tāj al-Dīn 'Abd al-Wahhāb b. al-Subkī*. Beirut: Dār al-Fikr, 1995, 2/241.

95 Sūrah al-Baqarah: 282

not say, "two upright men" only. This then leads them to say, 'So the entire matter is left to the judge now of evaluating the testimony. So, if men and women are equally trustworthy, the testimony of the one who has tried and tested the work in the specific field is weightier. And a field might require that another male corroborate another.'

It is a statement that testifies to the shallowness of the educational level and scriptural cognizance which are demanded for those who erect themselves as critics of the revealed law calling for it to be changed, ignorant of the fact that the verse of bequests used to oppose the debt verse bears in its words clear proofs of the stipulation of maleness and multiplicity in this testimony to anyone who knows the Arabic language and its like. So let us listen to it first. God—Most High—says: (O believers! When death approaches any of you, call upon two just males to witness as you make a bequest; otherwise, two others not from you, if you are afflicted with death while on a journey. If you doubt [their testimony], keep them after prayer and let them testify under oath saying, "By God! We would never sell our testimony for any price, even in favor of a close relative, nor withhold the testimony of God. Otherwise, we would surely be sinful").[96]

So, this verse indicates in different ways that maleness and multiplicity are stipulated in this testimony:

1. In His saying—Most High :(..."*ithnāni*"...) which is a word for the masculine dual (two) by agreement of linguists. It is similar in His sayings—Most High: (Do not take two gods),[97] and (If you do not support him, then Allah has supported

96 Sūrah al-Mā'idah: 106

97 Sūrah al-Naḥl: 51

him when those who reject faith expelled him as the second of two...).[98]

As for the feminine dual, the wording for it is '*ithnatā*' as in His sayings—Most High: (And we split them into twelve (*ithnatay 'asharah*) tribes as nations),[99] (And if they happen to be women beyond two (*ithnatayni*)...),[100] and (So if they happen to be two (*ithnatayni*), then theirs is two thirds of what he left behind).[101]

2. In His saying: (...*dhawā*...). For surely it is for the masculine dual by the agreement of linguists also, as in His sayings—Most High: (Two possessing (*dhawa*) integrity among you pass judgment on it as an offering reaching the Ka'bah),[102] and (And call to witness two possessing (*dhaway*) integrity among you).[103] As for the feminine dual, the term '*dhawatā*' is used to refer to it as in His sayings—Most High: (We substituted their two gardens with two gardens of bitter fruits, thorny shrubs, and meager harvest),[104] and (Full of varieties).[105]
3. In his saying '*ākharāni*' (two others), it is the dual of '*ākhar*' (other) for the masculine by agreement also. '*Ukhrā*' is the feminine form. And the dual feminine is '*ukhrayāni.*' And the word '*ākharāni*' has been repeated twice in this verse.
4. In His saying '*istahaqqā*' but not '*istahaqqatā*' and His saying '*yaqūmāni*' but not '*taqūmāni*' is another proof of maleness and the multiplicity of these two accepted witnesses in

98 Sūrah al-Tawbah: 40
99 Sūrah al-A 'rāf: 160
100 Sūrah al-Nisā ': 11
101 Sūrah al-Nisā ': 176
102 Sūrah al-Mā 'idah: 95
103 Sūrah al-Ṭalāq: 2
104 Sūrah Saba ': 16
105 Sūrah al-Raḥmān: 48

this testimony. So, is it valid for a claimant to say after this divine clarification and confirmation of the stipulation of multiplicity and maleness in this testimony that there is nothing in the verse that proves that, because He did not say, "male and two females" nor said, "*only* two possessors of integrity among men"? Can one claim that, consequently, the verse of bequests contradicts the debt verse? Despite all of that, this verse is abrogated according to the supermajority [of scholars]. And those who say it is not abrogated apply it specifically to bequests made during travel as is the verbatim and explicit wording of the verse, while the debt verse concerns wealth, travel, and non-travel in general due to its unqualified wording. So, it is the rule and default. And among the rules is that the specific neither abrogates the general nor cancels it. Hence, none of the jurists have stated that only the testimony of two upright men is accepted in all financial matters besides bequests.

The second justification for the call to equal testimony between the two sexes is what some repeat, we read in periodicals and hear on television about how much women have evolved, learned, and have become equal to men, surpassing them in many sciences and disciplines. This is contrary to the [case of] Arab woman at the time of the revelation of the Qur'an. Such are very misleading comments revealing great ignorance: ignorance of the understanding of testimony in Islam, ignorance of the basis for her acceptance and rejection, ignorance of the circumstances of women during the revelation of the Qur'an and their circumstances now, and ignorance of the jurisprudential rules that must be referenced and sourced when discussing scripturally rooted issues or speculative reasoning (*ijtihād*) for the extrapolation of its rulings.

1. Testimony in Islam is the mere reporting of the witness to the judge of what he saw or heard from the happenings of

which he has knowledge, as he—God's blessing and peace on him—said, "Have you seen the sun in the like of its form? Bear witness! Otherwise, refrain!" It demands neither academic knowledge nor university degrees nor specialized studies because he testifies to what he saw, heard, or what comes to him, not what he extrapolates (*istantajahu*). And the basis for its acceptance and rejection is moral integrity, accuracy, and *vice versa*. For this reason, the testimony of the unlearned and illiterate who neither reads nor writes is accepted; just as the testimony of the learned and educated is accepted when integrity and accuracy are fulfilled. And it is rejected when integrity and accuracy are lacking. Collegiate degrees and extensive experience have no benefit when integrity and accuracy are lacking. Similarly, their absence does not undermine credibility as long as an illiterate witness is characterized by integrity and accuracy. So, neither collegiate degrees, extensive knowledge nor precise experience have any effect on the acceptance or rejection of testimony except for in the issues wherein specific experience is requested. So, the evolution of the woman has no effect on it. And it does not justify the change of a well-established ruling.

2. Women haven't evolved alone to the exclusion of men. Rather, men, life, and interactions have evolved just as women have evolved. Consequently, the disparity (*mu'ādalah*) remains as is. The result is the same, equal to the earlier period when women were less evolved in awareness than men. So, one of five equals one fifth. And when the numerators and denominators of the two numbers are multiplied by an equal ratio one hundred times, for example, the result remains what it is i.e. one hundred over five hundred. So, one of five equals one fifth. And one hundred of five hundred equals one fifth. So, the swelling of the two numbers have not changed any part

of the result. Similarly, the notable evolution of women with the evolution of men and society do not change anything.

3. Then thirdly there were in his—God's blessing and peace on him—lifetime during the revelation of the debt verse many women upon a high level of knowledge and cognizance of the scriptural and literary sciences as well as jurists and poets none of whom these deluded men and women are on par with. The mothers of the faithful, Al-Khansā', and others were many. And that did not intercede in making their testimonies acceptable. Nor did they make such a demand. Nor did they consider that a diminution of their value.
4. Similarly, there remains in the present age a high ratio of ignorance and illiteracy in the ranks of women. And the rule is determined by the [state of] the majority, as it is said.
5. This ruling is not contingent upon ignorance nor its most likely place insomuch that it can be said that women have learned, evolved, and are no longer ignorant, while rulings revolve with their *ratio legis* in existence and non-existence, as some misapprehend. Rather, it is explained firstly by the likelihood of heedlessness and forgetfulness as His statement—Most High—suggests, (And if one of them misapprehends, the other may remind her).[106] That is, out of *fear* that one of them will forget or because one of them *will* [actually] forget. And the probability of forgetfulness and heedlessness is sufficient for realizing the ruling. It is not a condition for it to be actualized, in light of the juristic maxim, "The legal rationale is assigned to its potential place of origin. Its actualization is not a condition" (*al-ta'līl bi al-maẓinnah la yushtaraṭu taḥaqqu al-ma'innah*). What this means

106 Sūrah al-Baqarah: 281

is that the ruling is the same with all women, those we fear will stray and forget and those we are certain will not.

It is explained, secondly, by the imperfection in their intelligence as he—God's blessing and peace on him—said in what Al-Bukhārī relates with his chain of narration to Abū Sa'īd al-Khudrī—God be pleased with him—that he—God's blessing and peace on him—said, "I have never seen among those of imperfect intelligence and religious observance better at removing the core of the resolute man than one of you." They said, "And what is the imperfection in our religious observance and intelligence, O Messenger of Allah?" He said, "Is not the testimony of the woman the equal of half a man's testimony?" They said, "Indeed." He said, "So that is the imperfection of your intelligence." The hadith is related by Al-Bukhārī in the "Chapter on the Menstruating Woman Abandoning the Fast," [hadith] #304. Muslim related it in *Al-Īmān* the "Chapter of The Imperfection of Faith Due to the Reduction of Ritual Acts," hadith #80. And imperfection is a relative matter among what makes one susceptible to doubt and indecision (*min qabīl al-mushakkik*). And no woman is free of it, whatever state she may be in. And it is not possible for a woman to have perfect intelligence since it would lead to belying the Messenger in his report. And, perhaps, women's objection to this ruling and their demand for equal testimony between them and men despite knowing it is related in the Book and the Sunnah in this topic is additional proof of the imperfection in their intelligence, since only someone who lacks or has imperfect intelligence unaware of how that effects their Islam and faith would object to Allah's or His messenger's judgment,

demand it to be cancelled out, while every sinful imposter screams to amend it.

6. This verse is an explicit text concerning the stipulation of multiplicity in the testimony of women. And among the juristic maxims is that "The explicit text is not subject to interpretation."
7. This ruling is established by a text which is decisive in transmission and import. And one of the juristic maxims is that "Rulings established by the explicit scriptural text does not change with the change of circumstances, time, and place." Rather, they are among the transhistorical rulings that only change with an abrogating text. And there is no abrogation after his death—God's blessing and peace on him.

LEADERSHIP

What is meant by leadership (*wilāyah*) is the assumption of office of a general character inclusive of supreme leadership. The management of territories and the collection of Zakat are restricted to men. There is no right in them to women. No one has a right to appoint them. And it is not lawful for them to accept them in affirmation of his—God's blessing and peace on him—saying, "A people will not prosper who appoint a woman to head their affair." It is a hadith of the highest degree of authenticity. Aḥmad, Al-Bukhārī, Al-Nasāʾī related it as well as Al-Tirmidhī who said: "A fairly strong hadith" (*ḥadīth ḥasan ṣahīh*).[107] It is also a hadith clear in indicating the impermissibility of appointing women to any office and cautioning against

107 *Al-Bukhārī*: "The Book of Sorties: Chapter of The Prophet's Letter to Khosrow and Caesar." *Al-Nasāʾī*: "The Book of the Etiquette of Judges: Chapter of the Prohibition Against the Use of Women in Government (*ḥukm*)." *Al-Tirmidhī*: "The Book of Civil Strife and Crises," #2262. References: *Sahīh al-Bukhārī* #7099; *Sunan al-Nasāʾī* #5403.

doing that, because the pursuit of prosperity is a duty. And there is no way to achieve it without abandoning the appointment of women to office. And what is within one's capacity without which an absolute duty cannot be fulfilled is itself a duty. Al-Shawkānī said that it means that ignoring the command that undermines prosperity is a duty. And the hadith is inclusive of the one who appoints, the appointee, and the office appointed to. So, they are three generalities:

It includes the appointer because the word "people" in his saying "A people will not prosper" is an indefinite in the context of negation. So, it includes every people and all of humanity, Arabs and non-Arabs, Persians, Romans, and others.

It includes the appointee because his saying, "a woman," is [also] an indefinite in the context of negation. So, it covers every woman regardless of who she is and regardless of what knowledge, wisdom, and experience she has. So, it is not permitted to grant her an office.

As for its inclusion of the office appointed, it is because his saying "their affair" is a singular noun annexed to something defined. So, it covers every affair and every office. So, it covers the supreme leadership, which is a point of consensus, the office of judiciary in scripturally prescribed penalties (*ḥudūd*) and others, and guardianship in marriage. So, she is not to officiate her or another woman's marriage as Al-Khaṭṭābī has stated.[108] It also includes assuming the [role of] collection of Zakat and the government of territories and lands as Ibn Qudāmah said.[109]

The Sunnah as applied by the Messenger of Allah—God's blessing and peace on him, the rightly guided caliphs, and those after them confirm the gist of this hadith. For, it has not been established that he—God's blessing and peace on him—nor any

108 *Fatḥ al-Bārī*: 8/117

109 *Al-Mughnī*: 9/39

of his successors nor the leaders of Muslims after them made a woman governor over a town nor appointed one as a judge or Zakat collector. As for what is related that 'Umar appointed Al-Shifā' over the market, it is not sound and has no basis. Ibn al-'Arabī said in *Al-'Āriḍah*, "And her appointment was as a guard against violators (*ahl al-ikhtilāl*). He did not appoint her for judgment."

That was also confirmed by the verbal Sunnah in his sayings—God's blessing and peace on him—regarding the guardianship of marriage, "The marriage of any woman who marries off herself without the permission of her guardian is void, void, void!",[110] "The woman does not marry off a woman. Nor does the woman marry off herself. For, the fornicator is she who marries off herself,"[111] and by his saying about the office of judiciary, "Judges are of three kinds: one who is in Heaven and two who are in Hell. As for the one who is in Heaven, it is a man who knows the truth and judges accordingly. A man who knows the truth and is tyrannical in judgement is in Hell. And a man who judges for people without knowledge is in Hell."[112] They are proof of the stipulation of masculinity in the judge due to him saying, "a man..." and "a man..." Its underlying assumption (*mafhūm*) is that women are excluded. And since she is barred from the office of judiciary, barring her from supreme leadership, [the management of] territories, cities, and the military is the same *a fortiori*. Similar is his saying—God's blessing and peace on him, "Put

110 Previously cited on page 15

111 *Sunan al-Dāraquṭnī*: "The Book of Marriage." *Sunan Ibn Mājah*: "The Book of Marriage: Chapter of "There is No Marriage without a Guardian." Translator: The authenticity of this hadith is contested by most hadith masters. *Sunan al-Dāraqutnī* #3535; *Sunan Ibn Mājah* #1882.

112 *Sunan Abū Dāwūd*: "The Book of Judges: Chapter of "The Judge Makes Mistakes."" *Sunan Ibn Mājah*: "The Book of Judges (*Ḥukkām*): Chapter of "The Judge Exerts Himself and Rules Correctly." Translator: *Sunan Abū Dāwūd* #3573; *Sunan Ibn Mājah* #2315.

them in the back where Allah put them." It is proof of the bar against women being appointed to offices of leadership, because leadership is an advancement that conflicts with his command—God's blessing and peace on him—to put them in the back.[113]

The opponents and enemies of Islam among secularists and the callers to equality between the two sexes have attempted to cast aspersions on this hadith and its implications, injecting doubt into its soundness, confirmation, and correctness in many ways. They sometimes say that it is the narration of a man who was punished for a scripturally punishable crime.[114] 'Umar —God be pleased with him— punished him for accusing Al-Muġhīrah b. Shu'bah of committing illicit intercourse, and

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113 Translator's note: The author's use of this hadith outside its original context of congregational prayer makes it seem as if prayer leadership is a public political office rather than a purely devotional one. Evidence supports it to be a purely devotional position even though Imams (prayer leaders) were often appointed by local governors throughout Muslim history. The Prophet Muḥammad and his worldly successors, likewise, appointed Imams of the canonical prayers and led the Friday congregational service themselves. The use of such a citation in this way, naturally, corroborates the claims of Muslim feminists of its political nature. One must, however, keep in mind that 'religion' as private devotion distinct from politics is a consequence of the protestant revolution, modernity, and the European colonialism. For most premodern faith traditions, religion was tethered to politics, economics, and other disciplines we today disambiguate and compartmentalize as distinctly secular pursuits.

114 Translator's note: This is a reference to the fact that Abū Bakrah was flogged 80 times by the order of 'Umar b. al-Khaṭṭab for calumny of Al-Muġhirah b. Shu'bah. The books of Muslim history relate that the reason was that the four-witness testimony required for the accusation of illicit intercourse was not fulfilled. According to that history, Al-Muġhirah was actually found with a woman, and four men including Abū Bakrah witnessed the incident. Two of the men along with Abū Bakrah testified to witnessing penetration. Abū Bakrah's brother Ziyad, however, testified to only seeing Al-Mughirah on the top of the woman but did not see penetration which is a condition for a person to be convicted. Consequently, Abū Bakrah and his two comrades were all flogged. (See Ibn Al-Athīr, 'Alī b. Muḥammad. *Usd al-Ghābah fī Ma'rifah al-Ṣaḥābah*. Beirut: Dār Ibn Ḥazm, 2012).

he (Umar) did not accept his testimony due to his refusal to repent and perjuring himself, in accordance with His saying —Most High: (And for those who accuse chaste woman of indecency and do not produce four witnesses, flog them 80 stripes and accept not a testimony of theirs ever again. And those are the depraved ones).[115] His testimony was not accepted. So, his narration is [also] not accepted since there is no distinction.

At other times they say that it is a non-diffuse report (*khabar wāḥid*). Only Abū Bakrah related it. They also say it is specific to the occasional profile (*sūrah al-sabab*). For when it reached him—God's blessing and peace on him—that the Persians appointed the daughter of Kisrā as queen over them after the death of her father, he said, "A people will not prosper who appoint a woman to head their affair" as has come in the *Ṣaḥīḥ al-Bukhārī* from the hadith of Abū Bakrah. So, "people" and "woman" in the hadith specifically refer to Persia and the daughter of Kisrā. It applies neither to other [people] nor to other profiles, specifically restricting the general statement to the occasion of its mention.

They also say that it contradicts what Allah—Most High—narrates in the noble Qur'an about the Queen of Sheba and her success in managing her kingdom. He did not object to that. And one should not abandon what is in the Qur'an diffusely narrated (*mutawātir*) while embracing a non-diffuse report (*khabar wāḥid*). Lastly, they said the lived reality belies it. For many countries have been ruled by women who achieved success on levels exceeding the achievements of male rulers in the lands of the Arabs and Islam. So, to authenticate the hadith and construe it according to its general import leads to belying the Messenger—God's blessing and peace on him, while the prophets are divinely protected from lying. Honesty is a compulsory characteristic of theirs. And it is impossible for them to be dishonest. So, it

115 Sūrah al-Nūr: 4

is compulsory to reject the hadith which leads to belying the Messenger—God's blessing and peace on him—or to restrict it to the occasional profile to avoid belying the Messenger—God's blessing and peace on him—in his report about whom Allah—Most High—said, (Nor does he speak out of desire. It is but a revelation revealed).[116]

These are invalid objections, baseless arguments, and an embarrassing ignorance of the foundations of jurisprudence, hadith science, and the history of transmitters. As for the claim of it being the report from someone subjected to scripturally prescribed punishment resulting in his narration, like his testimony, being rejected, this is incorrect. It does not undermine his narration. The report of the person flogged for a Qur'anic penal violation (*maḥdūd*) is accepted by legal theorists, hadith masters, and jurists. The trustworthy Imams have reported on the authority of Abū Bakrah one hundred and two hadiths. Al-Bukhārī and Muslim agreed upon eight of them, while Al-Buhkārī independently transmitted five with Muslim transmitting one. Al-Ḥasan al-Baṣarī and Ibn Sīrīn said, "The best of those to reside in Baṣrah among the companions of the Messenger of Allah—God's blessing and peace on him—was Abū Bakrah and 'Imrān b. Ḥusayn." Also, the Messenger of Allah—God's blessing and peace on him— flogged Ḥassān b. Thābit over news spread of the scandal [of 'Āisha]. Nevertheless, the senior successors Sa'īd b. al-Musayyab, 'Urwah b. al-Zubayr, Abū Salamah, and others reported on his authority. And no one rejected his report. As for the claim of it being a non-diffuse report, that neither undermines nor harms it. Non-diffuse reports, on the other hand, are proofs according to the supermajority of scholars of various opinions and schools. The claim that it lacks authority leads to the invalidation of the Islamic

116 Sūrah al-Najm: 3-4

Law, since most of it is established by non-diffuse reports, while the diffuse reports are non-existent."[117] So, the opinion that the non-diffuse report is to be rejected is a means to disabuse oneself of the rulings of the Shariah established by the prophetic tradition.

As for the claim of it being restricted to the occasional profile, the view of the supermajority of legal theorists is that consideration is to be given to the generality of the wording, not the specificity of the occasion and that a general statement uttered on a specific occasion is borne upon its general import. Ibn al-Subkī says, "The general statement made on a specific occasion, according to most, is construed according to its general import."[118]

As for the claim that it contradicts what Allah narrated in the Qur'ān about the Queen of Sheba Bilqīs' rule of her people without objection, there are two matters which refute it:

1. What Allah—Most High—narrates about her kingdom was not narrated as a Shariah revealed to a prophet such that it might be applied to her that: "The revealed laws of those before us are revealed laws for us." He only narrated it as one of the incidents of an unbelieving people. Do you not observe the statement of the hoopoe bird: (I found her and her people worshiping the sun, instead of God)[119] as well as His saying—Most High—during her story: (she belonged

117 Translator's note: The claim that diffuse reports (i.e. *mutawātir*) are non-existent is a highly disputed matter. *Mutawātir* reports divide into 'diffuse in wording' (*mutawātir lafẓī*) and 'diffuse in meaning' (*mutawātir ma'nawī*). All scholars agree that the latter exists but differ about the number of the former. Some go as far as claiming that there is only one, which is the Prophet's saying, "Whoever lies on me intentionally, let him take his place in Hell."

118 *Jam' al-Jawāmi' bi Sharḥ al-Maḥallī*

119 Sūrah al-Naml: 24

to a disbelieving people)?[120] She. is, therefore, an unbeliever among the worshippers of the sun. And when did unbelievers become exemplars to be followed in their lifestyles (*sīrah*) and policy (*siyāsah*) such that it be said that the Qur'an's lack of objection and lack of criticism of that is proof of its legitimacy and the obligation to follow and place it before the non-diffuse reports that contradict it?

2. There is nothing barring the prophetic tradition from being contrary to what is in the Qur'an with respect to the revealed laws of those who came before us. It happens often. Among the examples are:
   a. His saying—Most High—during the story of the Cave: (Those who were overwhelmed by their affair said: "Let us build a place of worship over them")[121] despite his saying—God's blessing and peace on him, "God damn the Jews who took the graves of their prophets as places of worship."[122] Another is the hadith of Ibn 'Abbās, "The Messenger of Allah cursed women who visited graves and men who took them as places of worship and [hanging] lamps." For the verse outwardly indicates the legitimacy of taking graves as places of worship, while the two hadiths point to the impermissibility of that.
   b. His saying —Most High, (So, remove your sandals. You are in the holy valley of Ṭuwan)[123] along with the hadith of Anas that he—God's blessing and peace on him—used

120 Sūrah al-Naml: 43

121 Sūrah al-Kahf: 21

122 *Sahih al-Bukhārī*: "The Book of Salat: Chapter of Salat in Churches: Chapter of Salat in Churches." *Muslim*: "The Book of Mosques: Chapter of the Prohibition Against Building Mosques Over Graves." References: *Sahih al-Bukhārī* #1390; *Sahih Muslim* #529.

123 Sūrah Ṭāhā: 11

to pray in his sandals.[124] Another is his saying—God's blessing and peace on him, "Do the opposite of the Jews. They do not pray in their sandals nor their leather socks."[125] The verse points to the obligation of removing the sandals or its favorability, while the two hadiths point to the favorability of praying in them.

c. His saying—Most High—when narrating about Yūsuf, (Return to your lord and ask him, "What is the case of the women who cut their hands")[126] and his saying to the one he knew would be saved, (Remember me in the presence of your lord)[127] along with his saying—God's blessing and peace on him, "Let none of you say: "my slave" (*'Abdī wa amatī*). And let not the owned party (*mamluk*) say, "My lord" (*rabbī wa rabbatī*). Let one say, "My boy! My girl! My master! (*sayyidī wa sayyidatī*). Each of you is owned. And the Lord is Allah—Most High."[128] Another is his saying, "Let none of you say, "Feed your lord", "Clean your lord." Let him say, "My master, my patron."[129] The two verses

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124 *Al-Bukhārī*: "The Book of Salat: Chapter of Salat in Sandals." *Muslim*: "The Book of Mosques: Chapter of the Permission to Pray in Sandals." References: *Sahih al-Bukhari* #5850

125 Abu Dawud related it [in] "The Chapter of Salat in the Sandal: The Book of Salat." References: *Sunan Abī Dāwūd* #652.

126 Sūrah Yūsuf: 50

127 Sūrah Yūsuf: 42

128 Al-Bukhārī reported it in *Al-Adab Al-Mufrad*, p. 63. References: *Al-Adab Al-Mufrad* #209-10. The original print of the *Lā Dhukūriyyah* of the author misspelled the title of Al-Bukhārī's *Al-Adab Al-Mufrad*, substituting the '*dāl*' with '*dawd*.' The hadith is also reported in Al-Bukhari's *Sahīh* #2552 and *Sahīh Muslim* #2249.

129 Al-Bukhārī reported it in his *Ṣaḥīḥ*: "The Book of Manumission: Chapter of the Dislike of Acting Pompous Towards the Slave." References: *Sahih al-Bukhari* #2552. In the first edition, this read, "Your lord has fed! Your lord has decreed." This has been corrected to reflect the imperative as is found in the canonical collections. In the published work of the author, instead of "*waddi' rabbaka*", it reads "*qadā rabbuka*."

point to the permissibility of referring to one's owner and master as "Lord", while the two hadiths point to the impermissibility of that.

Another is the statement of Yūsuf, (Place me over the store houses of the land. Verily I am a knowledgeable safekeeper)[130] along with his saying—God's blessing and peace on him, "Verily, by Allah, we shall not grant this affair to anyone who asks for it nor anyone who is eager for it."[131] Another is his saying—God's blessing and peace on him, "O Abū 'Abd Al-Raḥmān b. Samurah! Do not ask for a leadership position. If you are given it without asking, you will be helped to perform it. And if you are given it after asking, you will be left to rely on yourself."[132]

As for the claim that the lived reality belies it and that many countries in the world are led by women who have realized astounding prosperity, it is built upon a misunderstanding of "prosperity" and their belief that prosperity is economic, political, and military influence, industrial expansion, technological progress, and other externalities and ornamentation of the lower life with which they are enamored while not seeing their flaws and ills. Meanwhile, prosperity in the Islamic paradigm, the Qur'anic nomenclature, and the prophetic tradition means something else other than that. It means otherworldly

130 Sūrah Yūsuf: 55

131 *Al-Bukhārī*: "The Book of Judgments: Chapter of "The Dislike of Coveting Leadership" with the wording, "Verily, we do not appoint this to those who ask for it nor those who are eager to assume it." *Muslim*: "The Book of Leadership: Chapter of the Prohibition of Asking for and Coveting Leadership." References: *Sahīh al-Bukhāri* #7149; *Sahīh Muslim* #1733.

132 *Al-Bukhārī*: "The Book of Judgments: Chapter of "Whoever does not ask for leadership will be helped by God." *Muslim*: "The Book of Leadership: Chapter of the Prohibition Against Asking for and Coveting Leadership." References: *Sahīh al-Bukhārī* #6722; *Sahīh Muslim* #1652.

prosperity, which is achieving paradise and its bliss along with eternal happiness therein. And when the prayer announcer (*mu'adhdhin*) calls in his loudest voice five times per day, "Hasten to prosperity", he is not inviting people to worldly prosperity that has no existence in mosques. He is only calling to prayer which qualifies them for otherworldly prosperity and eternal happiness which will be achieved only through obedience to God and fear of Him as His sayings—Most High—confirm that, (The believers have achieved prosperity),[133] (Verily, unbelievers do not prosper),[134] (He who becomes pure prospers),[135] (He who purifies prospers),[136] (Those are upon guidance from their Lord. And they are those who prosper),[137] and (Verily, Allah's party are the prosperous ones)[138] thus with the restrictive wording in the [last] two verses, part of what means that there are none who are prosperous who are not among those who are upon guidance from their Lord. There is no one who prospers other than Allah's party. And those who are upon guidance from their Lord are God's party. Similar is His saying about wine, (So avoid it so that you may prosper)[139] and about *ribā* (usury), (Do not devour usury in multiplied doubles. And fear Allah perchance you may prosper)[140] with the word 'perchance' (*la'alla*) which indicates the attachment of prosperity to the avoidance of wine, the abandonment of *riba,* and holding firm to fear in God which also means that there is no prosperity without avoiding wine, abandoning *ribā*, maintaining fear in God (*al-iltizām bi taqwā Allah*),

133 Sūrah al-Mu'minūn: 1
134 Sūrah al-Mu'minūn: 118
135 Sūrah al-A'lā: 14
136 Sūrah al-Shams: 9
137 Sūrah al-Baqarah: 4
138 Sūrah al-Mujādilah: 22
139 Sūrah al-Mā'idah: 90
140 Sūrah Āli 'Imrān: 130

and many other examples that are in the Qur'an. It also confirms that prosperity in the language of the Qur'an and Hadith means otherworldly prosperity. And no nation will achieve it who appoints a woman to head their affairs due to what he said—God's blessing and peace on him, because granting them leadership is a sin, while otherworldly prosperity is contingent upon fear of God as we saw in His saying—Most High: (And fear Allah perchance you may prosper).[141] Thus, the soundness of the hadith is confirmed, and the invalidity of all the specious arguments and objections become clear.[142] Lastly, there remains the question about denying women those political posts and the wisdom behind that.

In this regard, Ibn Qudāmah says in *Al-Mughnī*, while justifying their denial from the judiciary, that it is because the forums of litigants and men appear before a judge. And he is required to have full comprehension (*ra'y*), complete intelligence, and sagacity, whereas women are imperfect in intelligence, of incomplete comprehension. She is not fit for appearing in the forums of men. Her testimony will not be accepted even if one thousand like her were with her as long as a man is not with her. And Allah has alerted to their misapprehension (*ḍalāl*) and forgetfulness in His saying, (...so if one of them misapprehends, the other may remind her).[143] As for the wisdom behind this bar, it is eagerness to maintain the stability of the court, its proper operation, its safety from error, the preservation of

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141 Sūrah Āli 'Imrān: 130

142 Translator's note: Despite the linguistic, evidentiary, and rational strength of the author's argument, other Muslim jurists have, indeed, read "prosperity" in the hadith to refer to "worldly", not "other worldly", prosperity. Consequently, they, to varying degrees barred women from holding public office and leadership of any corporate enterprise based on the belief that bad worldly outcomes are more directly connected with the sex of the head of state and leader.

143 Sūrah al-Baqarah: 282 and look at *Al-Mughnī*: 9/39

the interests of people, their rights, property, honor, and to guarantee complete justice to litigants. For, Islam has forbade the male judge from ruling during times of anger and other instances wherein thought will be made foggy, out of fear of the ruling being exposed to error as he said—God's blessing and peace on him, "A judge is not to judge between two people while he is angry."[144] And the woman is most deserving of that bar on a permanent basis because the potential for error and forgetfulness is one of her inseparable and predominant characteristics, as the Messenger—God's blessing and peace on him—described her in his saying, "...imperfect in intelligence and religious observance..." and as the noble verse alludes to: (...that if one of them misapprehends, the other may remind her).

This is from the wisdom[145] of barring her from the post of judge and general leadership. As for the wisdom of barring her from the guardianship in marriage, it is to protect, support, and guard women against falling into an error which will be difficult to get out of. The woman in Islam is barred from mixing

144 Al-Bukhārī reported it [in] "The Book of Judgments: Chapter of "Shall a Judge Pass a Verdict While Angry?" *Muslim*: "The Book of Verdicts: Chapter of the Dislike of a Judge Passing Verdicts While Angry." *Al-Nasāʾī*: "The Book of the Etiquette of Judges: Chapter of Mention of What a Judge Should Avoid." References: *Sahīh al-Bukhārī* #7158; *Sahīh Muslim* #1717; *Sunan al-Nasāʾī* #5421.

145 Translator's note: The reader should take care to notice the subtle distinction the author is making between "wisdom" (*ḥikmah*) and the *ratio legis* (*ʿillah*). The legitimacy or illegitimacy of any act is determined by its *ratio legis*, not its wisdom. In most rulings where the *ratio legis* is stated or discerned, one or more discernible wisdoms accompany it. However, as already clarified, a jurist is not always able to discern the wisdom of a ruling from scripture. At other times, one may discern wisdom but cannot discern the *ratio legis*. Without knowledge of the latter, a ruling is not fit to be an analogue for a novel event or practice. Hence, the ruling of the analogue is not transferable to the novel event. So, by highlighting the wisdom for women being barred from public office, the author is signaling to the reader that the reasons listed originate from pure speculation which he believes strongly accord with God's purpose.

with men, intermingling with them, and cohabiting with them (*mu'āsharah*). She is easily attracted to them, duped by their warm approval, and have little experience with them. Marriage in Islam is a binding contract only dissolved by death or divorce. And women have no right to [unilateral] divorce. So, if they were to be given the right during the marriage and the freedom to undertake it without one of her guardians, she might fall into an error from which there is no way out. Regret brings her no benefit. So, it happens to be to her benefit to be denied this freedom that only brings to her regret and remorse. Assigning that to her guardian is because he is more acquainted than her with men and their conditions. And he is not to neglect any effort in making a good choice for her and protecting her.

As for the wisdom of preventing her from leading the prayer, it is because *focus* in Salat is its spirit, goal, and secret without which there is no prosperity as He—Most High—says: (The believers have achieved prosperity. Those who are focused in their prayers).[146] And there is no doubt that a woman standing in front of the rows, especially the rows of exuberant young men, with their postures in bowing and prostration before them does not inspire focus and concentration on Allah alone. For this reason, he—God's blessing and peace on him—said, "Put them in the back where Allah put them,"[147] and "The best ranks of women are those in the back and the worst of them are those in the front."[148] And that is not a belittlement of women nor an insult of her or an undermining of her qualifications. Rather, it

146 Sūrah al-Mu'minūn: 1-2

147 *Ṣaḥīḥ Ibn Khuzaymah*: "Chapter of Mention of Some of the Happenings Among the Women of the Children of Israel."

148 *Abū Dāwūd*: "The Book of Salat: Chapter of the Purity of Women and the Dislike of Not Praying in the First Row." *Al-Nasā'ī*: "The Book of Salat: Chapter of Mention of the Best Ranks of Women and the Worst Ranks of Men." References: *Sunan Abī Dāwūd* #678; *Sunan al-Nasā'ī* #820.

is to preserve the soundness of the prayer and to repel satanic misgivings.

THE WISDOM OF PLACING DIVORCE IN THE HAND OF THE HUSBAND, NOT THE WIFE

The wisdom of placing divorce in the hand of the husband, not another, is eagerness to maintain the stability of the family and to limit the imposition of divorce, firstly, by restricting it to a single hand, no more, and, secondly, placing it in the hand of the husband, no other, due to the following reasons:

Firstly: The husband is the head of the household, its founder, and the one responsible for it. So, he is the one who proposes to the wife, pays the dower, bears the expenses of the wife and children, and all other expenses of the home. And it is from wisdom and justice for him to be given the right to put a limit upon what he has built and founded with his effort and wealth as is the case with all projects wherein the right is given to its founder to terminate and dissolve it whenever he desires to.

Secondly: The husband is the first one harmed and the biggest loser in the case of divorce. He loses materially, spiritually, economically, and socially. He loses his wife who he divorces and all he expended during the marriage, and he remains pursued for the entitlements of divorce like severance pay, the obligations of the waiting period, the expenses of children, and what by which he will marry anew. He also loses part of his social status inasmuch that many people burden him with being accountable for the divorce, accuse him of its misuse, and women become afraid to marry him. He is also denied his children and their custody.

These consequences are among the things that induce the husband to think about the consequences of divorce prior to embarking upon it, to remain patient with what he dislikes

about his wife, and to bear what does not please him or angers him about her conduct and behavior. Meanwhile, the wife does not bear anything with respect to the establishment of the family and its continuation. She does not lose anything through divorce inasmuch that she takes her belongings, the delayed part of her dower, severance, and the funds given during the waiting period in addition to the expenses paid for the children she cares for in her custody.

Thirdly: The husband is patient by his nature, in control of his nerves, calm in most situations, deliberate in making decisions, which are attributes by their nature push him to be deliberate and unhasty in the use of divorce except in rare circumstances, especially when we consider the material, spiritual, familial, and social ruin that will afflict him as a result of divorce.

This is the opposite of the woman who is of little patience, quick to react, angered for the pettiest reason and for no reason at all. So, if the matter of divorce were to be assigned to her independently and she stands to lose nothing, she would not vacillate about using it for any reason or without reason. And divorce would reach every family sparing not a single household. No family would be safe from it. And everyone knows that every single husband who has or has not divorced his wife once has deafened his ears to hearing her say, "Divorce me! Divorce me!"

Fourthly and lastly: This is God's revealed law and religion that He revealed in His book and reinforced upon the tongue of His Messenger—God's blessing and peace on him—in his saying, "Divorce is only in the hand of the one who takes hold of the shin" (*...akhadha bi al-sāq*).[149] And it is known that wherever God's

149 This expression in Arabic is a metonym used to express the meaning that only a husband has the right to divorce. He owns the right to intercourse due to payment of the dower and regular maintenance. 'Taking hold or ownership of the shin' is creative way of saying 'he took ownership of

revealed law manifests, its benefit and wisdom are revealed. Those who know it, know it. And those who don't know, don't know. So, ignorance of the wisdom undermines neither the soundness of the ruling nor its wisdom. Nor does it authorize criticism of or objection to it.

WOMEN'S INHERITANCE

This topic is one about which much ink has been expended, producing much clamor and defamation of God and His messenger. And we will restrict the conversation here to two points:

The First: The Divine Wisdom of Giving More to Males Than Females

As is known the system of inheritance in Islam is a divine legislation. And because it advantages some relatives over others and some inherit to the exclusion of others, that inspires certain questions about its secret and wisdom out of caution from having some swerve off the straight path and think ill of God. God has underscored—Most High—in the verses of inheritance His self-described wisdom and knowledge which encompass everything in the present and future. And He emphasized that more than once saying—Most High: (Your parents and your children—you do not know which are closer to you in welfare.

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the good.' The good in this case is a utility, not a corpus inasmuch that a husband does not own a woman's body but the reasonable and lawful use of parts of her body for sexual gratification. Using the part of something to refer to what is adjacent to or near it (*iṭlāq al-shay' 'alā mā yujāwiruhu*) is a common rhetorical device employed by Arabs. The shin borders the knee which borders the thigh, which greatly agitates male sexual passion as do other parts of a woman's body. This expression could also be an example of the use of a part of something to refer to its entirety (*iṭlāq al-ba'ḍ 'alā al-kull*), since it is said that a woman's entire body is an object of sexual agitation for men (*al-'awrah*).

This is God's Law. God is Knowing and Judicious),[150] (This is a will from God. God is Knowing and Clement),[151] and in on one rendition (...Knowing and Wise). He said in the *kalālah* verse, (Allah explains to you so you won't be misled. And Allah is knowing of everything).[152] And He said: (And do not seek what by which Allah made some of you more advantaged over others. Men have a share of what they earn. And women have a share of what they earn. And ask Allah from His bounty. Verily, Allah is knowing of everything).[153]

All of this repetition, emphasis, and reminding of His wisdom—Most High—and knowledge is so that everyone will know that this disparity in inheritance and the advantaging of some over others is justice in its entirety, not oppression nor tyranny. And it is the clear unadulterated truth. There is no error, wrong, misguidance, or falsehood about it.

Firstly, it is because it is an advantage given by Allah, the All-Knowing of the interests and benefits of people, the Most-Wise in His behavior, acts, and judgments among which is the preference of the male over the female in inheritance.

Secondly, it is because it is a distribution from the true owner of the material legacy (*tarikah*), who is Allah who owns the dominion of the heavens, earth, and all between. All wealth is His wealth. He gives it to whomever He pleases and denies it from whomever He pleases, or He shows preference to some over others. He does whatever He wants and rules in whatever way He desires. He is not asked about what He does, while they will be. And it is the duty of all to say, "We hear and obey" as

150 Sūrah al-Nisā': 11

151 Sūrah al-Nisā': 12

152 Sūrah al-Nisā': 176

153 Sūrah al-Nisā': 32

Allah has commanded them and not say, "We hear and disobey" as the Jews said.

This, however, does not prevent one from searching for the wisdom of this disparity and preference of the male over the female to silence the opponents of Islam and convince the skeptics of the justice of this distinction and its wisdoms, some of which become manifest in what follows:

- The male or man in the Islamic scheme is burdened with a long list of continuous and reoccurring heavy financial burdens. He is the one who pays the dower upon marriage as He said—Most High: (And give women their dowers—graciously).[154] He is the one who bears the expenses of the wedding and reception as he—God's blessing and peace on him—said to 'Abd Al-Raḥmān b. 'Awf, "Have a reception even if with only a lamb."[155] He is the one responsible for maintaining himself, to provide housing, and to sustain his wife and children in times of constraint and expanse as He—Most High—said: (Let he who possesses expanse spend from his expanse. And he whose provisions are constrained, let him spend from what God has given him).[156] He is the one from whom the divorce severance pay is demanded upon his divorce in His saying—Most High: (And grant them a severance, the well to do according to his capacity and the constrained according to his capacity, a severance according to equitable terms as a right upon the good doers).[157] He is the one ordered to do jihad with his life and property in His

154 Sūrah al-Nisā': 4

155 Al-Bukhārī reported it [in] "The Book of Marriage: Chapter of How to Pray for the Married Person." *Muslim*: "The Book of Marriage: Chapter of The Dower and The Permissibility of it Being the Teaching of the Qur'an and an Iron Ring." References: *Sahīh al-Bukhārī* #3937; *Sahīh Muslim* #1427.

156 Al-Ṭalāq: 7

157 Al-Baqarah: 236

saying—Most High: (Go out lightly or heavily and struggle with your wealth and yourselves in the way of Allah).[158] And, he is the one addressed to help finance the wergild of involuntary manslaughter that is an obligation upon the agnate males (*ʿāqilah*) among other unexpected financial burdens like honoring guests, religious sacrifices, the Zakat of *fiṭr*, while the woman is exempted from all of those burdens. She pays no dowry nor is she burdened to provide for herself, husband, or children. She does not bear any part of the wergild with the agnate males. There is no jihad nor sacrifice expected of her. And her *zakat al-fiṭr* is the duty of her husband.[159]

And Islam did not suffice to exempt the woman from these financial burdens and cast them upon the man. Rather, it went further than that when it considered some of these burdens to be religious obligations not subject to being relinquished and omitted. So, when a man marries a woman with the condition that there will be no dower, no maintenance, no housing for her and no clothing or he stipulates that she must provide for the husband or his children, the marriage is annulled before consummation compulsorily (*wujūban*). And the husband is prevented from consummating the marriage with his wife. But, if he has intercourse with her, the condition is nullified, and she is given the dower of her likes. And she is entitled to her rights she yielded during her marriage by her pure intent. Thus, it becomes clear that she has no need for what she takes of the inheritance except in a rare case when she happens to be an orphan or becomes

158 Al-Tawbah: 41

159 Translator's note: In the Ḥanafi School, married women, like their husbands, are obligated to pay zakat al-fiṭr on her own behalf. Certain schools also obligate wealthy women to provide for their needy parents and other poor relatives as well.

a widow without a husband nor children who can bear her maintenance.

And part of the wisdom [in inheritance disparities] is to give the wealth to those who need and spend it or at least to prefer and advantage him over those who do not need it. The other only takes it to store and save it or spend it on nonsensical and trivial things while the real difference between the male and female is nothing big. Rather, it does not exceed one sixth. So, if we assumed a legacy of six divided between the son and daughter equally, each one of them would take three. And when it is divided disproportionately, the son takes four and the daughter takes two. So, what the daughter loses is only one sixth. And Islam gives her as a substitute what it imposes for her of the dower and maintenance upon the husband, the severance during divorce, and her exemption from the previous financial burdens, whereas if she had been given that difference, he would be incapable of filling it. And she would need to earn a wage from which Islam exempted her and has casted upon the man alone out of earnest for the health and comfort of the woman, a safeguard for her against the routine of seeking wealth, and out of compassion towards her against the problems of earning. And the woman is more aware than others of the price demanded of her every time she knocks on a door of employment or finds herself in one of the workshops of the job or an office under the authority of an employer or heartless supervisor (*ra'īs*) who lacks morals.

As for the male child, that formal (*ṣūrī*) difference between him and his sister in inheritance may not suffice him to confront those burdens casted upon his shoulder towards the women be she a wife, daughter, mother, or another. Consequently, he might become the one harmed in the end. However, he is satisfied with God's judgment and verdict,

patiently seeking reward without complaining to anyone nor demanding he be exempted from those burdens or through equality between him and the woman in bearing them, due to his complete faith, true certainty, and knowledge of the wisdom of the Lord of the worlds and the justice of the wisest of judges who forbade oppression upon Himself. He said in His clear book: (And your Lord wrongs no one),[160] and (And your Lord does not oppress His slaves).[161] And all that the man hopes for from the woman is for her to accept this disparity in inheritance with a faithful spirit and a tranquil satisfied soul just as he accepted those burdens, and for her to refrain from screaming and shouting in the face of Islam and accusing it of being biased toward the male and against the female, and for her to know:

- That the Jewish mother is barred from inheritance from her son and daughter permanently. And she is not counted among the heirs at all.
- That the Jewish daughter has no right to inheritance when she marries during the life of her father and that when she desires to inherit, she must sacrifice her youth and live as a spinster with all of its problems until the father dies in order to take her right in inheritance or die before his death thereby losing everything.
- That the Jewish sister does not inherit anything with her brother whenever there is a brother or nephews with her.
- That the eldest son is given double the amount of the second and third son. So, when there happen to be three sons, the eldest son takes one half and the second and third sons take one fourth each.

160 Sūrah al-Kahf: 49

161 Sūrah Fuṣṣilat: 46

And with this clear disparity and glaring distinction between married and unmarried daughters, male and female siblings, the father, and the mother in the origin of inheritance while granting inheritance to some to the exclusion of others despite the unity of sex, closeness, and advantaging the eldest son over those born after him, they are silent without complaint or protest about that. And we do not hear anyone in the east nor west highlighting their issue and attacking their inheritance scheme among those calling for equality between the sexes, the claimants of human rights and those obsessed with defending the right of the Muslim woman to equality in inheritance. And this matter is what calls to question the secret of this empathy with the Muslim woman in demanding equality in inheritance and inciting her to rebel against her religion and revealed law with every means along with absolute silence and suspicious reticence about the matter of the Jewish woman and her suffering. Is it because the scheme of Jewish inheritance is more just and fairer for women than the scheme of Islamic inheritance, so, for that reason, the Islamic scheme is attacked while the Jewish scheme is made peace with? Or is it that those responsible in the Jewish state stand in wait for everyone whose soul begs him to violate their religious sanctities and they do not permit for anyone to critique them and incite chaos among its people, while those responsible in Islamic states do not respect their sanctities, lower their gaze from those playing with them and those who attack them in the name freedom of opinion part of what has encouraged the opponents of Islam internally and externally to apply a double standard, as it is said, and to look at matters with two different pairs of glasses? Or is it that the fundamental goal of this call and this clamor is to undermine Islam, its revealed law, and to incite chaos between the members of its societies?

Whatever the answer may be, the Muslim woman is called to prove her awareness, intelligence, and commitment to faith

(*dīnahā*) and to think much about this comparison between her situation and the predicament of others from one regard and between the assault of the enemies of Islam and its opponents on the scheme of Islamic inheritance despite the balance it realizes for the male and female between rights and obligations, gains and indemnities, income and expenditures until neither of them is afflicted with a rupture to his budget, and between their silence and peace making with another scheme wherein the woman is exposed to complete denial of inheritance, it being given to another woman or man at her same rank without a justification.

The Second: The Centrality of the Woman and Her Status in Inheritance in Islam

All are aware that the scheme of inheritance in Islam divides the heirs into residuaries and sharers. And the one who keeps track of the state of the heirs observes:

- That most women are sharers always or sometimes: The mother, the wife, the daughter, the son's daughter, the full sisters, or those who are paternal or maternal, and the two grandmothers. And the only woman who inherits as a residuary is the female manumitter of a slave (*mawlāt al-nîmah*).
- Just as most heirs among men inherit by residuary status. Those among who inherit as sharers are only the husband, the uterine brother, as well as the father and grandfather in certain cases. This means:
  a. Firstly: that female heirs have a guaranteed right to inherit in light of their description as sharers. There is nothing for them to fear if the shares consume [the wealth of] the scenario.
  b. Secondly: they are given priority in the division of estates and placed before residuary men as he said—God's

blessing and peace on him, "Attach the shares to their owners. Then, whatever remains belongs to the most entitled male [residuary]."[162]

c. And it means, thirdly, that the woman may inherit while the male may not if he happened to be in her place and there is not a female at his rank, because she is entitled to a share while he is merely a residuary who inherits what is left over by the sharers. An example of that is:

- A husband, a mother, a grandfather, and a full or paternal sister: The sister here inherits and is assigned one half for her, while the scenario is overdrawn to nine [due to an insufficient amount of wealth to accommodate all shares]. And if there had been a full or paternal brother in her place, he would have been barred from inheriting since the shares would be consumed by the scenario.
- A husband, a mother, a son, a father, a daughter, and a son's son. The son's son does not inherit anything due to being barred by the share that consumes the residue. And had there been a son's daughter in his place, she would have been assigned a share of one sixth to complete the two thirds [she shares with the daughter]. And the scenario would overdraw into thirteen parts.
- A husband, a full sister, and a paternal sister. The paternal sister inherits one sixth and the scenario overdraws to seven parts. And if there had been a paternal brother in her place, he would have not inherited anything due to him being eliminated by the consuming share.

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162 Al-Bukhārī reported it [in] "The Book of Inheritance Laws: Chapter of the Inheritance of the Child from its Father and Mother." *Muslim*: "The Book of Inheritance Laws: Chapter of "Attach the shares to their owners. Then, whatever remains belongs to the most entitled male [residuary]."" References: *Sahīh al-Bukhārī* #6746; *Sahīh Muslim* #1615.

Similarly, it means that the woman may inherit in some cases more than the man inherits. An example of that is:

- A husband, a father, and a daughter. The daughter inherits one half. The father and husband only inherit one fourth each.
- A wife, a paternal brother, and two full sisters. The wife inherits one fourth. The two girls inherit two thirds with each of them receiving one third. And the brother inherits the remainder which is one twelfth.

Such scenarios in Islamic jurisprudence are many. And if this indicates anything, it is the falsity of what the opponents and enemies of Islam circulate about how the woman is marginalized and her rights are digested in inheritance. And when we consider that the heirs who are never barred from inheriting are three males and three females: the father, the husband, the son, the wife, the daughter, and the mother, none of them are ever denied the inheritance, the permanent members of inheritance are equal numbers of males and females. Meanwhile, the probability of women inheriting is greater than the probability of men inheriting, because women inherit specific shares and males inherit the residue as is the case with sisters and sons' daughters from one regard and brothers and sons' sons from another regard. So, is it valid, after [observing] this central place the woman occupies in the scheme of Islamic inheritance for anyone to claim that she is marginalized or robbed of rights (*mahḍūmah al-ḥuqūq*)?

CHARGE IN THE ISLAMIC PARADIGM

A man's charge (*al-qiwāmah*) over the woman is one of the issues that women complain about and consider a clear bias against them, [a form of] enslavement, interference in her private affairs, and a restriction of her freedom. And she rejects, with

intensity and obstinance, being subordinate to the command of her husband, obligated to obey him, and him having a right to discipline and prevent her from leaving the home without his permission. She demands to be set free from the authority of the husband and to share with him the management of the family and making all decisions which are made with regard to the family and her children. In this discussion, we will speak about the concept of charge in the Islamic view, its scriptural evidence, limits, wisdom, the reason why women complain about it, and the ways of protecting them from abuse and excess in its use by the husband.

Firstly: The concept of charge (*al-qiwāmah*), was interpreted by Ibn 'Abbas—God be pleased with him—to mean authority (*imārah*).[163] Al-Qurṭubī interpreted it as 'caring for something, monopolizing the supervision of it, and guarding it by exerting effort about it."[164] Ibn Kathīr interpreted it as, "leadership and rule."[165] And charge in the Islamic view imposes on the husband obligations and grants him rights just as it imposes upon the wife obligations, which are:

1. It imposes upon the husband by his description as a caretaker, authority, master, and governor (*hākim*) material and ethical obligations towards his wife that take the form of the obligation of her maintenance, clothing, housing, courteous treatment, lack of harm and non-transgression against her or her belongings, private wealth, salaries, compulsion into domestic service, kindness in one's speech toward her, and to greet her with a pleasing countenance in light of God's sayings, (Let he who possesses expanse spend from his expanse. And he whose provisions are constrained, let him

163 *Mukhtaṣar Ibn Kathīr*: 1/385

164 *Al-Jāmi' li Aḥkām al-Qur'ān*: 5/110

165 *Mukhtaṣar Ibn Kathīr*: 1/385

spend from what God has given him),[166] (And from its father is due their provision and clothing according to equitable standards),[167] (And cohabit with them with courtesy),[168] (And give women their dowers—graciously. Then if they willfully remit to you part of it, then enjoy it...),[169] (House them where you house yourselves from your provision and do not attempt harming them in order to bring constraints upon them. And if they are pregnant, then provide for them),[170] (And do not keep them for harm in order to transgress),[171] (And do not harass them in order to take part of what you gave them unless they commit a clear indecency),[172] and (And men have a grade over them).[173] Similar is his saying—God's blessing and peace on him—in what Abū Dāwūd reports that Mu'āwiyah al-Qurashī said, "I went to the Messenger of Allah—God's blessing and peace on him—and said: "What do you say about our women?" He said: "Feed them from what you eat. Clothe them from what you wear. Do not strike them. And do not disfigure."[174] And in one narration he said, "I said: "O Messenger of Allah! What is the right of one of our wives over him?" He said: "To feed her from what you eat. To clothe her from what you adorn or earn. Do not strike in the face. Do not disfigure. And only abandon [conjugal relations] while in the bed."[175] Similar is his saying,

166 From verse 7 of Al-Ṭalāq

167 From verse 231 of Al-Baqarah

168 From verse 19 of Al-Nisā'

169 Verse 4 of Al-Nisā'

170 From verse 6 of Al-Ṭalāq

171 From verse 229 of Al-Baqarah

172 From verse 19 of Al-Nisā'

173 Al-Baqarah from verse 226

174 *Sunan* Abi Dāwūd: "The Book of Marriage: Chapter of the Right of the Woman Over Her Husband." References: *Sunan Abī Dāwūd* #2144.

175 Ibid. 1/245

"Have the best of intentions with women. They are as slaves with you. You own nothing of them other than that unless they commit a clear indecency. Verily, their right over you is that you are generous to them in their attire and food."[176] And there are other hadiths that enumerate the obligations of men toward women.

As for the rights that charge affords the husband, they take the form of:

1. His right to steer the affairs of the family, the complete independence to manage it, and the sole role of overseeing its interests just as they take the form of
2. His right to discipline his wife when needed, to prevent her from leaving the home without his permission, and for her not to give entry to anyone to his home as he—God's blessing and peace on him—said, "Fear Allah regarding women. You have taken them by God's trust and made their pudendum lawful by the word of God. And you have over them the right for them not to allow anyone to tread upon your furnishings you disapprove of. So, if they do so, hit them without causing excruciating pain."[177]

As for the obligations that charge imposes upon the wife toward the husband, they are many; the most important of which are obedience to his command and prohibition, the supervision of his home, and the guarding of his property in his presence and absence.

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176 Part of a hadith related by Al-Tirmidhī [in] "The Book of Suckling: Chapter of the Right of the Woman Over Her Husband." References: *Sunan al-Tirmidhi* #1163.

177 Part of a hadith related by Muslim [in] "The Book of Hajj: Chapter of the Prophet's Hajj—God's blessing and peace on him. References: *Sahīh Muslim* #1218.

Secondly: Regarding Proof for the Legitimacy of Charge, there are:

1. His saying: (Men are the caretakers of women, as God has given some of them an advantage over others, and because they spend out of their wealth. The good women are obedient, guarding what God would have them guard. As for those from whom you fear disloyalty, admonish them, and abandon them in their beds, then strike them. But if they obey you, seek no way against them).[178] This verse gives the husband the right to discipline his wife and to abandon conjugal relations with her in case of fear of disloyalty. And it imposes on her obedience to him. His saying "So righteous women are obedient" means "to the command."
2. His saying—Most High: (O you who believe! Shield yourselves and your family from a fire whose fuel is men and stones).[179] It is a command to all believers to shield themselves and their families from the Fire. It is imposed upon the husband as one of the believers whom the verse addresses to work to shield one's wives from this fire by lecturing and teaching them what they must do, ordering them to do good, forbidding them from doing wrong, preventing them from doing so, and disciplining them when they commit it.
3. What has been related that the wife of Sa'd b. al-Rabī' acted rebelliously towards him (*nashazat 'alayhi*), so he slapped her. Her father said, "O Messenger of Allah! I gave him my precious jewel as a bed and he slapped her." He—God's blessing and peace on him—said, "Let her retaliate from her husband." So, she left with her father in order to retaliate but he—God's blessing and peace on him—said, "Come back! This is Gabriel who has come to me." Then, Allah

178 Verse 34 of Al-Nisā'

179 From verse 6 of Al-Taḥrīm

revealed this verse, "Men are the caretakers" He said, "We wanted something, but Allah wanted something else." And in another narration, "We wanted one thing. And whatever Allah wants is better."[180]

4. What was related that a woman came to the Prophet—God's blessing and peace on him—and he said, "Do you have a husband?" She said, "Yes." He said, "So how do you treat him?" She said, "I do not neglect him unless I lack the ability to do something." He said, "Be observant of how you treat him. He is your heaven or hell."[181]
5. The hadith of Anas that he—God's blessing and peace on him—said, "It is not appropriate for a person to prostrate to another person. And if it had been appropriate for a person to prostrate to a person, I would have ordered the woman to prostrate to her husband due to the gravity of his right over her. And by He in whose hand is my soul, if there was a sore filled with puss and serum coming from his foot all the way to the top of his head and she was to suck it, she would not fulfill his right."[182]
6. The hadith of Abū Hurayrah that he—God's blessing and peace on him—said, "When the man calls his wife to his bed and she refuses to come to him leading him to go to sleep

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180 *Al-Jāmi' li Aḥkām al-Qur'ān of Al-Qurṭubī* 5/110

181 *Al-Muwaṭṭa* the rendition of Muḥammad b. al-Ḥasan: Kitāb al-Anāq: Chapter of the Right of the Man Over the Wife." Translator's note: This citation appears to contain a misspelling and an improper citation. There is no *Kitāb al-'Anāq* in the Muwaṭṭa of Muḥammad b. al-Ḥasan. This may be *Kitāb al-'Atāq*. Unfortunately, *Kitāb al-'Atāq* does not contain a section entitled, "The Right of the Man of the Wife."

182 *Sunan al-Tirmidhī*: "The Book of Suckling: Chapter of the Right of the Husband Over the Wife." And he said about it, "*ḥadith ḥasan gharīb*" without the addition of "...coming from his foot..." It is found in the *Musnad* of Aḥmad: *The Musnad of Anas b. Mālik.*

angry with her, the angels curse her until she wakes up in the morning."[183]

7. What Aḥmad and Ibn Mājah relate that he—God's blessing and peace on him—said, "By He in whose hand is my soul, a woman does not fulfill the right of her Lord until she fulfills the right of her husband. And if he were to ask her for herself when she is [riding] on the hump of a camel, she is not to deny him."[184]
8. The hadith of Jābir that he ascribes to the Prophet, "There are three whose Salat is not answered and no good deed of theirs ascends to heaven: the fugitive slave until he returns,[185] the drunkard until he is sober, and the woman whose husband is angry with her until he is pleased."[186]

These verses, hadiths, and others all indicate the legitimacy of charge (*al-qiwāmah*) and that it is one of the rights men have over women as Allah—Most High—said, "Men are the caretakers

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183 *Al-Bukhārī*: "The Book of Marriage: Chapter of "When the Woman Spends the Night Denying Her Husband Sex." References: *Sahīh al-Bukhārī* #3237.

184 *Sunan Ibn Mājah*: "The Book of Marriage: Chapter Concerning the Husband's Right Over the Wife." And Ibn Hibbān graded it as sound (*sahhahahu*): "The Book of Marriage: Chapter Concerning Social Intercourse Between Spouses." References: *Sunan Ibn Mājah* #1853

185 Translator's note: According to one prophetic tradition, "The fugitive slave is an unbeliever (*kāfir*) until he returns." It appears that the intent of such statements is that the fugitive slave is treated like an enemy combatant (*kāfir ḥarbī*) until he returns since it is assumed that he has defected to the enemies of the Muslim state. Consequently, his life may be taken to prevent him from conveying military and other secrets to the enemy unless he returns with a valid excuse.

186 Al-Bayhaqī reported it [in] The Book of Salat: Chapter of "The Loss of Awareness Due to Drunkenness Does not Remove the Religious Duties." Al-Tirmidhī reported it with the words, "There are three whose prayers do not go pass their ears: The fugitive slave until he returns, a woman who spent the night while her husband was angry with her, and the leader of a people who dislike him." *Ḥasan Gharīb*, "The Book of Salat: Chapter of "He Who Leads a People While They Disapprove of Him." References: *Sunan al-Bayhaqī* #1830; *Sunan al-Tirmidhī* #358.

of women." The limits to this charge remain [to be discussed], which is the next point:

Thirdly: The Limits of Charge Given to Husbands. It is a responsibility, not absolute authority by which husbands exhibit control over their wives however they please. Rather, it is authority restricted by firm scriptural regulations which obligate the husband to stop at them and not overstep them. Otherwise, he will be exposed to discipline in life (*al-dunyā*) and punishment after death (*al-ākhirah*). His saying—Most High—summarizes it, (Then, if they obey you, seek no path against them)[187] as well as his—God's blessing and peace on him—sayings, "There is no obedience in disobedience. Obedience is only in good,"[188] and "The most perfect believers in faith are those best in conduct. And the best of you are the best of you to their wives."[189] There are also other proofs besides the aforementioned hadiths that burden the husband with material and disciplinary obligations whose purpose is to protect the wife from the tyranny (*ta'assuf*) of the husband in the exercise of charge (*al-qiwāmah*).

This is the position of Islam on charge. And this is Allah's and His Messenger's ruling on it. The question remains, firstly, about the wisdom of this charge and for what reason was it originally legislated? Why wasn't the matter left unmentioned? Secondly, concerns the wisdom of placing it in the hand of men over women? Why couldn't it have been the opposite, given to women over men? And why wasn't it made a shared right

187 A part of verse 34

188 Al-Bukhārī [in] "The Book of Non-Diffuse Reports: Chapter of "What Has Come About the Permissibility of Non-Diffuse Reports of the Pious Narrator." *Muslim*: "The Book of Leadership: Chapter of the Obligation of Obeying the Leader in What is not a Sin and Its Impermissibility When it is a Sin." References: *Sahīh al-Bukhārī #7257; Sahīh Muslim #1840.*

189 *Sunan al-Tirmidhī*: "The Book of Suckling: Chapter of What Has Come About the Right of the Wife Over Her Husband." References: *Sunan al-Tirmidhī* #1162.

between men and women between the husband and wife so that no one would feel that Islam is biased against him or her? These are four questions we will attempt to find their answers and uncover their rulings and secrets in what follows by Allah's might and assistance.

Firstly: As for the fundamental wisdom of the legality of charge, regardless of who bears its burden, the family is an important social and religious institution. It plays a big and serious role in society. It is its spirit and heart. It is healthy according to its health and corrupt according to its corruption. So, to neglect and abandon it without a head who leads it or a pilot who steers it would mean the spread of chaos in its ranks and the realization of its ruin, that of society formed from it and the nation caring for it. In the past the poet said:

لا يصلح الناس فوضى لا سراة لهم
ولا سراة إذا جهالهم سادوا

No people rectify chaos who have no chief
and there is no chief when their ignorant have charge

This is from one regard. From another regard Islam, the religion of order and discipline, is eager to organize its family and society and to protect them from discord and dispersion. It does not allow for the penetration of chaos and disturbance to the ranks of its people even in the Salat. For that reason, it obligates every group that travels to appoint someone as a leader over them as he—God's blessing and peace on him—said, "It is not lawful for three to be in a desolate land without them appointing one of them to be the commander."[190] And another

190 Abū Dāwūd reported it. *Musnad Aḥmad*: "*Musnad 'Abd Allah b. 'Amr b. al-'Ās.*" References: *Sunan Abī Dāwūd* #2608.

hadith reads, "When three go out on a journey, let them make one of them their commander."[191]

And if it is obligatory to appoint a commander over a group who are united on the path for a number of days, then why not the same with those who are permanently united by a home, children, and those who have a firm agreement (*mithāq ġhalīẓ*)? They are more entitled to appointing a commander over them with a caveat between the two groups: it is that those traveling *choose* their commander themselves. In the family, on the other hand, the selection of their commander and appointment is from God—Most High: (Men are the caretakers of women). So, they have no right to choose another nor to object to his appointment as God—Most High—who said, (It is not for any believer, man or woman, when God and His Messenger have decided a matter, to have liberty of choice in their decision).[192]

Secondly: As for the wisdom of granting charge to the man and making it a right over her, it is because he is more perfect in intelligence than the woman, of greater experience than her, more in control of himself and his nerves, and more capable of bearing its responsibility than her. And they are attributes that qualify him to be a successful leader in addition to his financial and economic role in the family, plus the dower he gives to the wife and wealth he expends on the wife and family as His—Most High—saying alludes to: (Because of what merit He gives to some over others and because of what they spend of their wealth).

And there is nothing strange when considering the financial support factor to give more weight to the husband's side over the that of the wife's. The world today in its institutions gives

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191 *Sunan Abū Dāwūd*: "The Book of Jihad: Chapter Regarding "When Men Travel, Let One of Them be Their Leader." References: *Sunan Abī Dāwūd* #2608.

192 From verse 36 of Al-Aḥzāb.

the right to the leadership of corporations and their management to those who possess fifty one percent only of its capital. So, is the husband not entitled to the management of the family when he is the sole financier of it burdened with providing for her from its start to its end? No one shares in its burdens. So, how can he be distanced from its leadership or have someone share in its steering?

Thirdly: As for the wisdom of distancing and denying the woman from having charge over the man, it is because charge is a position of authority (*imārah*) and leadership as stated by Ibn 'Abbas and others. And the woman is not fit for authority (*imārah*) as he—God's blessing and peace on him—said, "A people will not prosper who appoint a woman to head their affair."[193] It is also because the woman is imperfect in intelligence by the testimony of the one who does not speak from personal whim. She is of little experience, quick to act emotionally and reactively (*infi'āl wa ta'aththur*), weak in physique (*binyah*) and management. And they are all negative attributes which disqualify her from the successful leadership (*qiyādah*) desirable in every driver and leader.

Fourthly: As for the wisdom of the woman not sharing this charge with the husband and making it something shared between them, it is because the principle in Islam is the unity of steering and leadership in the affairs of religion and worldly matters. It does not see good in collective leadership because participatory leadership leads to disagreement and disunity. Each will desire to follow his fancy and impose his viewpoint. And God—Most High—says, (If there had been therein gods other than Allah, they would be in chaos).[194] Therefore, when the Ansar said on the day of the Saqīfah, "One leader from us

193 Previously cited on page 47

194 From verse 22 of Sūrah al-Anbiyā'

and one leader from you", the companions did not accept their opinion, and they insisted upon the unity of leadership and steering. As for his saying—God's blessing and peace on him, "The man is a shepherd over the people of his home. And the woman is a shepherd over the people of her husband's home", it is not participation in shepherding between them. Rather, the shepherding of the husband is the shepherding of commandership, while the shepherding of the woman is the shepherding of advice. This, then, is the wisdom for the legality of charge and why it has been made a right of men over women. So, why does the woman complain of it and accuse Islam of bias towards the man and against her?

If that does not please her and she does not want anyone to exercise authority over her and impose obedience to him over her, then she should never marry. That is her right. And no one is able to force her to do so as the hadith of Abū Sa'īd al-Khudrī indicates that a man came with his daughter to the Prophet—God's blessing and peace on him—and said, "This is my daughter. She refuses to marry. So, he said: "Obey your father. Do you know the right of the husband over the wife? If he had a sore on his nose exuding pus and serum and she were to suck it, she would not fulfill his right." She said: "By He who sent you with the truth, I shall not marry." So, the Messenger of God—God's blessing and peace on him—said, "Do not marry them without their permission."[195] So, this girl refused marriage and swore that she would not marry after knowing the rights of the husband that marriage burdens her with. Then the Messenger—God's blessing and peace on him—affirmed her upon her decision and forbade compelling her and all women to do things against their will like marriage and the charge that is a consequence of it. As for the woman choosing marriage and

195 *Sunan al-Dāraquṭnī*: 3/237

then refusing its demands among which is charge, that is not a right of theirs, because by her acceptance of marriage upon the Book and Sunnah as the marriage contract expresses, she becomes duty bound to the right of the husband in the charge over her as the Book and Sunnah upon which the two of them have married indicate.

- And if she complains of the charge due to what she sees of the tyranny of husbands in its use and their excessiveness (*shaṭaṭ*) in its application, then Allah—Most High—has protected her from the overreach of the husbands and their tyranny in His saying, (Then if they obey you, then seek not a path against them). And the Prophet—God's blessing and peace on him—confirmed that in his noble hadiths. Islamic jurisprudence has, also, opened its doors in their faces to the maintenance of their rights and punishment of the transgressor against them while providing an opportunity to those among them who desire liberation through divorce in light of harm, discord (*shiqāq*), and wifely requests for dissolution (*khul'*).[196]
- If her complaint is due to her adversities and the difficulty to bear its burdens, then Allah—Most High—grants her in place of that an enormous reward as he said—God's blessing and peace on him, "Any woman who dies while her husband is pleased with her enters paradise."[197] And he—God's blessing and peace on him—said, "When the woman prays her five, fasts her month, and obeys her husband, it is said

196 *Sunan al-Tirmidhī*: "The Book of Marriage: Chapter of What Has Come About the Right of the Husband Over the Wife." And he said, "*Ḥasan Ġharīb*."

197 *Sunan al-Tirmidhī*: "The Book of Marriage: Chapter of What Has Come About the Right of the Husband Over the Wife." And he said, "*Ḥasan Ġharīb*." References: *Sunan al-Tirmidhī* #1161.

to her: "Enter Paradise from any of the gates of Heaven you please."[198]

- If her complaint is due to her ignorance of its ruling and demands, then she must learn them and ask about them prior to marriage as the Messenger—God's blessing and peace on him—clarified to the girl who refused marriage and her father complained to the Prophet—God's blessing and peace on him—about her in order that she has clarity about her affair and knows the reality of what she is undertaking.
- If her complaint is a challenge and objection after her knowing it, then that is apostasy without doubt. She must repent and ask forgiveness from it without delay.
- If that is from the influence of inciteful propaganda, then she must know that the Jewish woman suffers from charge multiple times the degree that the Muslim woman suffers. However, she remains silent and satisfied. She doesn't complain about it. And no one complains in her name or incites her to reject it and disobey her husband.

Is there not in this proof of the fact that incitement of this complaint and its amplification in the circles of Muslim women but not others, that the intent is not to achieve justice for the woman and to defend her rights, and that the true goal is destroy the Muslim family and undermine its unity in order to weaken this nation and perfect domination over it?

Lastly, isn't it strange that currently you see the woman who rejects the husband's charge over her and refuses to obey him in good is the same one we see dedicated today to the obedience of her president in management, the office, and the factory without discussing with him anything he requests from her or orders her to do, while those who protest in defense of her

198 *Ṣaḥīḥ Ibn Ḥibbān*: "The Book of Marriage: Chapter of The Homelife of the Spouses." References: *Ṣaḥīḥ Ibn Ḥibbān* #4163.

freedom are those who impose upon her obedience to themselves and the implementation of their orders (*la yatasāhalūna ma'ahā fī dhālik*)? Then neither the woman nor these consider that a violation of her dignity nor her sanctity nor a restriction of her freedom. So, what has afflicted their minds and led them to fall into this embarrassing contradiction? Obedience to the husband is an insult to his wife, while obedience to the president is a welcomed duty.

And all praise belongs to Allah by who all good things find completion.

APPENDIX

Women and Intelligence

BY ABDULLAH BIN HAMID ALI

ON THE AUTHORITY OF Abū Sa'īd al-Khudrī—God be pleased with him, the Messenger of God—upon him God's blessing and peace—said, "O assembly of women! Give charity! For I noticed that you are most of Hell's inhabitants." They asked: "And why is that O God's Messenger?" He said: "You frequently curse [others], and you show ingratitude to [your] husbands. And, I have never seen among those imperfect in reasoning[199] and religious devotion better at removing the focus (*lubb*) of the resolute man than one of you."[200] In another version of this hadith on the authority of 'Abd Allah b. 'Umar—God be pleased with him, the Messenger of God—upon him God's blessing and peace—said, "O assembly of women! Give in charity and ask forgiveness often! For I noticed that you are most of Hell's inhabitants."[1] Upon this, a sharp-witted (*jazlah*) woman said: "And what quality is it of ours—O God's Messenger—that makes us the most numerous of the inhabitants of Hell?" He said: "You frequently curse [others], and you show ingratitude to

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199 In Shaykh Muḥammad al-Ta'wil's work, I translated *'aql* as "intelligence." I believe this is consistent with his interpretation of the word in context.

200 Al-Bukhārī, Muḥammad b. Ismā'īl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 356, Hadith #1462 In another version, Abū Sa'īd reportedly said,
"They said, "And what is the imperfection in our religious devotion and reasoning, O Messenger of God?" He said, "Is not the testimony of the woman the equal of half a man's testimony?" They said, "Indeed." He said, "So that is the imperfection in your reasoning."
The hadith is related by Al-Bukhārī in the "Chapter on the Menstruating Woman Abandoning the Fast," [hadith] #304.

[your] husbands (*'ashīr*). And, I have never seen among those of imperfect reasoning (*'aql*) and religious devotion (*dīn*) better at removing the focus (*lubb*) of the resolute man than one of you [women]."[2] She [then] said: "O God's Messenger! And what is the imperfection in [our] reasoning and religious devotion?" He said: "As for the imperfection in reasoning, [it is that] the testimony of two women is the equivalent of one man. This is the imperfection in reasoning. [The other is that] she spends nights without praying and abandons the fast in Ramadan. This is the imperfection in religious devotion."[3]

Admittedly, this hadith has troubled me for many years. In my earlier essay entitled "Is Intelligence Gender Specific?" I attempted to placate the Muslim and non-Muslim public with what I thought at the time was a novel and cogent interpretation. In that apology, I argued that the Prophet used the word *'aql* to mean "discriminatory capacity"[201] and suggested that men, generally, are more discerning of deception in business agreements than women. At the time, I was less comfortable with challenging hadiths classified as "sahih" (sound). So, I settled for an interpretation I thought might mitigate outrage about something which to the contemporary mind is no longer considered a truism. I continue to embrace "sahih" hadiths. But I have come to realize two crucial errors I made in my earlier paper: 1) I neglected an important presumption embraced by classical scholars regarding non-diffused (āhādī) reports, which is that hadiths may or may not contain the Prophet's exact words. They may be treated as proximate renditions by

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201 The suggestion is that women are imprecise in their recollection of such details. This was the view of Abū 'Abd Allah Al-Māzarī who Al-Nawwawī quotes as having said, "It means they are rarely accurate" (*qalīlāt al-dabt*) after quoting Q 2:282 "And get the witness of two witnesses from your men; or if there are not two men, then a man and two women of your choice from among the witnesses, so that if one of them errs the other may remind her."

his Companions attempting to convey his original teachings (*marwiyyah bi al-ma'nā*). The words are chosen or recalled by the Companions who narrate in most instances. For this reason, Abu al-Dardā' and others would say after repeating what they recalled of the Prophet's words, "...or something like this or of this sort" (*Allāhumma illā hākadhā aw kashaklihi*).[202] Of this practice, Abū 'Īsā al-Tirmidhī said, "As for he who presents (*aqāma*) the chain of transmission (*isnād*), commits it to memory, and alters the wording, this is tolerable (wāsi') according to the people of knowledge as long as the meaning is not altered."[203]

Such knowledge may help explain inconsistencies that appear in this type of report such as the fact that the Prophet did not directly answer why women are presumably imperfect in reasoning (*'aql*). He, rather, mentioned the fact that two women take the place of one man when testifying to the details of a long-term business debt as required by the Qur'ān 2:282.[204] Narrators are those who bear the burden of missing context and poorly worded expressions, especially those that apparently berate certain groups of people unjustifiably. And while it was a

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202 Most scholars permit for one to paraphrase the Prophet's words. Among them were most Companions, the Successors, Al-Bukhari, 'Ali b. Al-Madīnī, and Al-Tirmidhi. The latter reports that the Companion Wāthilah b. al-Asqa' said, "If I relate to you according to the meaning, that is sufficient for you" (*idhā haddathtukum 'alā al-ma'nā fahasbukum*). Similarly, the Successor Zarārah b. Awfā said, "I met several of the Prophet's companions. They differed in how they worded things to me but were united in the meaning." Also see Al-Nasā'ī, Abu Khaythamah Zuhayr b. Harb. *Kitāb al-'Ilm*. Riyadh: Maktabah al-Ma'ārif, 2001, p. 44.

203 Al-Tirmidhi, Abū 'Īsā. *Jāmi' al-Tirmidhī*. Damascus and Riyadh: Dār al-Fayhā' and Dār al-Salām, 1999, p. 893.

204 Answering the woman in the way the hadith portrays the Prophet as doing is like a doctor reponding that, "Two male patients recovered from illness X" after being asked, "What do I have doctor?" This does not seem to accord with the logical and moral coherence from the Prophet to which we are customed.

prophetic norm to provide general answers to specific questions or to answer questions with others which prompt the questioner to think, incoherent responses like the one above seem uncharacteristic of the clarity for which he is known; Women do not fully participate in canonical prayers and fasting like men due to menstrual cycles. They are also not treated as full witnesses in business agreements. But unlike his explanation for the deficiency in female reasoning, his response to what makes them imperfect in religious devotion coheres; for a reduction in religious acts due to menstruation is a clear quantitative difference. Of this, Al-Qurtubī says, "Their imperfection in that regard is not a disparagement of them. The Prophet—upon him God's blessing and peace—mentioned that about them out of sheer amazement with men inasmuch that they are conquered by those who are of lesser rank and of unequal perfection." He continues, "And that is like what Al-A'shī said of them: "And they are malignant, conquering those who conquer" (*wa hunna sharrun ghālibun man ghalab*). It is also as the saying goes: "They conquer the noble. And they conquer the ignoble" (*wa yaghlibna al-kirām wa yaghlibna al-li'ām).*""[205]

2) The other mistake—likely due to the first error—was failing to read the Prophet's statements in tandem with others which further help clarify the meaning of *'aql* or simply what he was trying to convey about the female temperament and disposition. If hadiths are not to be taken as his exact words or words are potentially added to his own, a better approach to proper comprehension would be to include other hadiths in our examination, especially those that refer to a woman's state of mind. Consequently, I have disavowed my earlier thesis and now introduce another, which is that the Prophet's aim was merely

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205 Al-Qurṭubī, Aḥmad b. 'Umar. *Al-Mufhim min mā ashkala min Kitāb Muslim.* Damascus and Beirut: Dār Ibn Kathīr and Dār al-Kalim al-Tayyib, 1996, 1/270.

to underscore the fact that women do not require the level of cunning that men often need to subjugate other men. Rather, women possess an "intelligence" and allure which differs from that of men. And this is why the Prophet referred to them as deficient or imperfect in *'aql*. That women are, generally, less "rational" (i.e. more intuitive and emotional) than men remains a truism. This likely explains why so few take offense to being called "irrational" and "unreasonable," and why others demonize "rationality" as a male vice—or one belonging to White men more specifically.[206] On the other hand, great consternation erupts anytime it is suggested that women are less "intelligent" than men. This is because it suggests that women are stupid and possess flawed cognition.

Public discussions of intelligence have become taboo, especially when sex and race are concerned. The IQ debate set off by Herrnstein and Murray's *The Bell Curve* is just one example. Of Islam's many topics of controversy, the above prophetic tradition features prominently since it ostensibly disparages women. Not many would disagree that characterizing entire classes of people in unflattering ways provides ample cause for outrage, especially when the characterization seemingly asserts the absence of a virtue of which the target of that privation believes he or she possesses. This is especially important when one is accused of lacking a smidgen of intelligence since this is usually understood to mean one is stupid or mentally

206 Although it has been removed due to broad criticism, the Smithsonian Museum in 2021 posted a chart titled "Aspects & Assumptions of Whiteness & White Culture in the United States." The chart listed rugged individualism, the nuclear family, emphasis on the scientific method, and other values as examples of White culture. Watts, M. (2021, May 25). In Smithsonian race guidelines, rational thinking and hard work are white values. Newsweek. https://www.newsweek.com/smithsonian-race-guidelines-rational-thinking-hard-work-are-white-values-1518333

retarded. That notwithstanding, I have translated the word *'aql* as "reason" instead of "intelligence" as I believe it to be a more accurate rendering of the Prophet's words. In my view, his goal was to reinforce the idiosyncratic norm of "unreasonableness" displayed by women in certain situations rather than to suggest that they lack the natural capacity to understand certain things. Nevertheless, a closer look at intelligence may help us understanding the complexities involved with presuming it to be the target of the Prophet's pronouncement.

Many believe the word 'intelligent' entered the English language in the early 16th century. It derives from the Latin verb *intelligere*—a composite of *inter* (between) and *legere* (choose)—meaning 'understand.' In this sense, an intelligent person is one who possesses the capacity to choose between available options or "the ability to acquire and apply knowledge and skills."

Intelligence is commonly used for "the collection of information of military or political value" although in its archaic form it was used for general information or news. Accordingly, intelligence has two foundational applications: One is to a faculty or aptitude. The other is to the information gathered from the use of that faculty. We should, perhaps, call this faculty 'intellect' and the byproduct of its use 'intelligence.' And the mental process of acquiring understanding through thought, experience, and the senses we should called 'cognition.'

According to the British philosopher Michael Hand, intelligence is "an aptitude for theorizing."[207] In his essay entitled "The Concept of Intelligence," Hand underscores that confusion over its meaning results largely from the normalized technical definitions and standards of psychology. According to Hand, few psychologists have attempted to deal with intelligence in its

207 Hand, M., (2007) "The concept of intelligence", *London Review of Education* 5(1), p. 43. doi: https://doi.org/10.1080/14748460701241832

common sense and the few who have done so are influenced by Gilbert Ryle and his 1949 book *The Concept of Mind.* Hand rebuffs Ryle's thesis that intelligence means competent action on the part of the actor and that the intelligent person is the one who can perform competently in a field.[208] This implies that a swimmer, writer, builder, or any other person with competence in any given skill can be characterized as "intelligent."

John White, a defender of Ryle, reduces intelligence to i) an innate capacity to acquire other abilities or capacities; ii) a learned capacity (e.g. to speak, swim, drive, or forage); and iii) the successful application of a capacity.[209] This would mean that intelligence can be possessed, acquired, and showcased but also that it can be lost due to non-application. Hand finds this absurd. His corrective is that intelligence is an aptitude rather than a capacity. In his words,

> ...intelligence is a quality of mind possessed to different degrees by different people. We say of some people that they are highly intelligent, of others that they are moderately intelligent, and of still others that they are not intelligent at all. In this respect the quality of mind designated by the term 'intelligence' resembles such qualities of mind as ambition, generosity and sensitivity. People are more or less intelligent just as they are more or less ambitious, generous and sensitive.[210]

Being a quality of mind or aptitude highlights the use value of the ordinary concept of intelligence in the field of education

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208 Hand, M., (2007) "The concept of intelligence", *London Review of Education* 5(1), p. 37. doi: https://doi.org/10.1080/14748460701241832

209 Hand, M., (2007) "The concept of intelligence", *London Review of Education* 5(1), p. 39. doi: https://doi.org/10.1080/14748460701241832

210 Hand, M., (2007) "The concept of intelligence", *London Review of Education* 5(1), p. 41. doi: https://doi.org/10.1080/14748460701241832

where teachers are tasked to evaluate student competency and the potential obstacles to their academic success.

The relevance of this debate appears in the difficulty it creates to conclude intelligence to be a special innate quality of men as opposed to women or that intelligence levels among men exceed their female counterparts. According to Hand,

> It remains an open question whether intelligence is a product of nature or nurture, or whether there is any meaningful way of quantifying the respective contributions of the two. Attempts to write an answer to this question into the concept of intelligence itself are wholly misguided. Intelligence *might* be innate or fixed, but it is not innate or fixed *by definition*;[211] and the position one happens to take in the nature-nurture debate has no bearing at all on one's ability to distinguish intelligent people from unintelligent ones.[212]

According to Hand's definition of intelligence, the hadith above would suggest that men have a greater aptitude for theorizing than women, while Ryle's definition suggests that men also perform more competently in the various fields. The Rylean definition is rifer for abuse inasmuch that when applied without qualification, it suggests that men outperform women in everything. This is not because Ryle's believed that to be the case. It is because the hadith's wording encourages such reasoning were we to adopt Ryle's definition and translate *'aql* as 'intelligence.' Of course, men do outperform women in many things, especially in physical and strenuous activities like most sports. Men

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211 By saying intelligence is not innate or fixed "by definition," Hand is underscoring that intelligence is judged demonstratively. That is, we know one is intelligent by what we observe. We can never know with certainty that this is due to some physiological characteristic or faculty like one's faculty of hearing, sight, or taste. In Hand's view, that does not matter. What matters is what we observe in each person's "aptitude for theorizing" or lack thereof.

212 Hand, M., (2007) "The concept of intelligence", *London Review of Education* 5(1), p. 41. doi: https://doi.org/10.1080/14748460701241832

also predominate in the STEM fields where excellence in theoretical and abstract knowledge are fundamental.[213] But women excel in fields of care, like nursing, preschool, and childhood education.[214] But to call outperformance in a field "intelligence" seems strange or redundant since we already have terms to describe excellence in non-theoretical fields and activities that are not "theory intensive."

The aim is not to resolve this debate but to merely clarify that our impressions of what it means to be intelligent and our reactions to being called unintelligent have an inseparable connect to the way intelligence is defined and conceived. An improper understanding of what is meant by intelligence when applied to words of the Prophet often lead to the following fatal misgivings: (1) that the hadith berates women while extolling male intellectual virtue; (2) that intelligence relates to cognition (i.e. men can understand what women cannot); (3) that intelligence absolutely determines superiority of one over another; (4) that greater intelligence means that men are perfect, and women are imperfect; and (5) that God has greater love for the most intelligent, not for the most pious.

Whether it means an aptitude for theorizing, competent action within a field or both, high levels of intelligence in no way determine the superiority of one human being over another nor the extent of God's love for a person. Considering how effectively Satan has corrupted the moral order and distorted our

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213 Zandt, F. (2023, October 11). STEM college degrees still Male-Dominated. *Statista Daily Data*. https://www.statista.com/chart/31013/stem-degrees-conferred-in-the-us-by-gender/

214 U.S. Census Bureau. (2024, October 2). *Women hold 76% of all health care jobs, gaining in Higher-Paying occupations*. Census.gov. https://www.census.gov/library/stories/2019/08/your-health-care-in-womens-hands.html#:~:text=By%20far%2C%20the%20largest%20health,both%20of%20these%20large%20occupations.

sense of reality, he can be rightfully called intelligent. But his cunning does not bring him closer to God. Nor will it save him from the eternal flame. Some of the most "intelligent" people on earth graduate from ivy league universities, like Harvard and Yale, and go on to become the most destructive forces on the planet.

The word in the hadith often translated as "intelligence" is *'aql* which can also mean sanity, reason, rationality, reasoning, intellect, and the mind. As the Arabs sometimes used it to denote mental calmness and composure especially in stressful situations, it also implies equanimity. This is born out of the belief of its association with the verb *ma-na-'a* (مَنَعَ) meaning to 'hold back,' 'prevent,' or 'restrain.' According to Al-Qurtubī, "The origin of *'aql* is knowledge (*'ilm*). It is sometimes used for stillness (*al-hudū'*), gravity of deportment (*al-waqār*), and deliberation in matters (*al-tathabbut fi al-umūr*)."[215] A cognate of *'aql* is *'iqāl* which is the harness used to keep camels and horses restrained and unable to flee from their owners.[216] *Al-man'* is also a synonym of *al-ḥikmah*, the Arabic word for wisdom. Its cognate,

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215 Al-Qurtubī, Aḥmad b. 'Umar. *Al-Mufhim min mā ashkala min Kitāb Muslim.* Damascus and Beirut: Dar Ibn Kathir and Dar al-Kalim al-Tayyib, 1996, 1/269.

216 According to the Arabic lexicographer Al-Fayrūzābādī, "*Al-'Aql* is knowledge or [it is] knowledge of the characteristics of things—their beauty, ugliness, perfections, and imperfections. Or [it is] the knowledge of the best of two goods or the worst of two evils. Or it is absolute [knowledge] of many matters or a faculty (*quwwah*) by which the discernment between ugliness and beauty happens or [a word] for concepts collected in the mind which occur upon premises by which aims and interests are ordered. And [it is used] for a praiseworthy state of a person regarding his movements and speech. The truth is that it is a spiritual light (*nūr rūhānī*) by which the soul (*nafs*) apprehends self-evident and reflective facts (*al-'ulūm al-darūriyyah wa al-nazariyyah*). Its existence begins with a child's conception and continues to grow until it is completed at puberty." Al-Fayrūzābādī, Muḥammad b. Ya'qūb. *Al-Qāmūs Al-Muhīt.* Beirut: Mu'assasah al-Risālah, 2005, pp. 1033-34

ḥākim, means governor or judge since each of them prevents criminals from violating the rights of law-abiding citizens. A wiseman is called a *ḥakīm* because he prevents himself from flawed thinking and imprudent behavior. In the same way, the intelligent person is called *ʿāqil* since he uses his intellect to protect himself from harm.

Al-ʿaql is an essential trait of the temperate who must master his emotions and passions to mete out justice. The human being is the rational animal (*ḥayawān nātiq*), a definition which applies equally to men and women. An emotionally volatile state does not fare well for offices of justice. Consequently, throughout history women have been viewed as unfit for leadership posts,[217] especially when those posts involve the right to punish and discipline others. Until recent centuries, women were universally denied access to leadership roles due to their higher perceived emotional reactivity,[218] agreeableness,[219] and reduced physical strength, which were believed to diminish one's capacity to effectively fulfill one's role as governor and judge. The disciplinarian should be both temperate and skilled in the art of

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217 For most of Muslim history, Muslim jurists have barred women from being the head of state or caliph. Most of them also held that only men may be judges. Abu Hanifah dissented and permitted for women to judge financial disputes only. Al-Tabari, on the other hand, permitted for women to serve as judge in any type of dispute. Al-Qurṭubī, Abu al-Walīd Ibn Rushd. *Bidāyah al-Mujtahid wa Nihāyah al-Muqtasid*. Beirut: Dār al-Kutub al-'Ilmiyyah, 1997, 2/175.

218 Schmitt, D. P., PhD. (2015, April 10). Women's negative emotionality as experienced around the world. *Psychology Today*. https://www.psychologytoday.com/us/blog/sexual-personalities/201504/are-women-more-emotional-than-men#:~:text=In%20addition%20to%20reacting%20more,threats%20more%20than%20men%20do.

219 Schmitt, D. P., Realo, A., Voracek, M., & Allik, J. (2008). "Why can't a man be more like a woman? Sex differences in Big Five personality traits across 55 cultures." *Journal of Personality and Social Psychology*, 94(1), 168–182.

discipline. And one who needs to be protected should not be made a protector of those tasked with her protection.

Justice is the primary mandate of both governors and judges. And that can only be guaranteed when officials are held to higher ethical and emotional standards than the average person. For this reason, Prophet Muḥammad said, "The judge is not to give a verdict between two [people] while he is angry."[220] Muslim jurists have added he should also not judge when he is hungry or sleepy.[221] This is because agitation caused by unfulfilled physiological, emotional, and ideological needs often lead to unjust verdicts and laws. Neither enmity nor close associations should interfere with the officiation of justice. Nor should a judge pass a verdict based on secret evidence and information known only to himself. A lack of appreciation for a defendant's tone, personal slights, or injury done to a member of one's clan or group do not justify a guilty verdict. Nor should political or ideological allegiances factor into one's decisions.[222] The demands of justice

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220 Al-Bukhārī, Muḥammad b. Ismāʿīl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 1768, Hadith #7158.

221 Al-Qāḍī Abū Shujā lists ten occasions that one should avoid passing judgment: when angry, hungry, thirsty, in need of sex, extremely sad or happy, sick, while withholding urine or feces, extremely sleepy, and during times of excessive hot or cold weather. Al-Asfahānī, Aḥmad b. al-Husayn. *Matn al-Ghāyah wa al-Taqrīb fi al-Fiqh al-Shāfiʿi*. Beirut: Dār Ibn Hazm, 2004, pp. 369-70.

222 Aḥmad (#8422), Al-Tirmidhī (#1247), Abū Dāwūd (#3100), and Ibn Mājah (#2299) all report the Prophet as having said, "He who is appointed to be judge is slaughtered without a knife." Fair treatment can be very risky, especially when one sides with the truth against one's intimates. Tribalism is common among people. And they often expect friends to show deference to them during disputes. A judge can almost never satisfy both disputants. It is, apparently, in this sense what this hadith means by being slaughtered without a knife. When one claimant gets his way, the other remains aggrieved and often resentful towards the judge. If a judge has a highly agreeable personality, he/she may rule in favor of one's friends, colleagues, or ideological brethren to retain legitimacy in their eyes while sacrificing

are such that only the evidence and arguments presented before one may form the basis of a ruling in a case.

Women are known to be the more intuitive species, while men the more rational i.e. less emotional. But rationality has been given greater value, historically, partly, because we are all defined as "rational" animals. Another is because intuitive knowledge is too subjective to serve as a common basis for the realization of societal justice. When the Prophet Muḥammad recommended emotional restraint (*sabr*) to a woman wailing over the grave of her dead child, she responded abrasively not realizing that it was God's Messenger addressing her: "Leave me alone! You don't know what it's like to lose a child," she said. But, of course, the Prophet had already had plenty of experience of loss in his life to not deserve such a lecture. Later, after being informed that it was none other than God's Messenger counseling her, the woman rushed to his home anxious, remorseful, and apologetic. The Prophet, then, told her, "Real patience is demonstrated at the initial strike of the affliction."[223] Compare this to what he said of the tears he shed for his grandchild he held in his arms in the throes of death in response to Sa'd b. Abī Waqqās' respectful objections, "This is mercy that God has placed in the hearts of His devotees. God only shows mercy to the merciful ones."[224] He also said on another occasion while crying, "God does not punish for the eye's tears nor for the heart's sadness. Rather, he punishes for this (pointing to his tongue) or He shows mercy."[225] While patience (*sabr*) is unique

justice on its altar. This potential exists regardless of one's sex. Its potential increases with higher levels of agreeableness.

223 Al-Bukhārī, Muḥammad b. Ismā'īl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 315, Hadith #1302.

224 Al-Nawawwi, Yahya b. Sharaf. *Sahih Muslim bi Sharh al-Nawawwi*. Beirut: Dār al-Fikr, 1995, 3/2/188-89 (#923).

225 Al-Nawawwi, Yahya b. Sharaf. *Sahih Muslim bi Sharh al-Nawawwi*. Beirut: Dār al-Fikr, 1995, 3/2/189 (#924).

to human beings, its close association with rationality or intelligence is what interests us here. Since all people are expected to be rational, it should not surprise us that the Prophet demanded emotional restraint from the woman.

When his wife 'Ā'ishah responded abrasively to a group of Jews who greeted the Prophet with "Death upon you," he counseled her to remain dignified and to note the profundity of his own response to them, "And upon you too."[226] It was both gentle and compelling since we will all die someday. When a verse of the Qur'an was revealed permitting for the Prophet to marry various sorts of women, Ā'ishah jealously responded, "It seems your Lord races to your desires."[227] He demanded similar restraint from her father Abu Bakr when a man was berating him before the Prophet. The Prophet smiled with every insult due to Abu Bakr's restraint. But the moment Abu Bakr responded with similar abrasiveness, the Prophet stood up and walked away. He would later explain to him that an angel was standing defending Abu Bakr from every insult. But when Abu Bakr responded, the devil appeared. "And I am not one to sit with the devil."[228]

Some hadiths present women to be more prone to revilement, disparagement, abrasiveness, and other harmful remarks. And while a minority of Muslim commentators claim the hadith above refers specifically to the Arab women living during the time of the Prophet,[229] studies corroborate the image that

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226 Al-Bukhārī, Muḥammad b. Ismā'īl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 1594, Hadith #6401.

227 Al-Bukhārī, Muḥammad b. Ismā'īl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 1304, Hadith #5113.

228 Imam Aḥmad reports it in his *Musnad* (#9624), Abū Dāwūd in his *Sunan* (#4879), Al-Bazzār in his *Musnad* (#8495), Al-Baghawī in *Sharh al-Sunnah* (#3586), Al-Bayhaqī in *Al-Sunan Al-Kubrā* (10/236), and Al-Qudā'ī in *Musnad al-Shihāb* (#820).

229 Al-Qurṭubī says, "Cursing those that one is not permitted to curse occurs frequently upon their tongues. And that was a widespread custom among

women—lacking the physically compulsive tactics of men—are more likely to show aggression through abusive language, bullying, gossip, and slander.[230] The Prophet advised women to give charity because after looking into Hell, he noticed that most of its inhabitants were women. When asked why, he responded, "They frequently curse others and show ingratitude to their husbands." Cursing and ingratitude are sins. "And charity extinguishes sin just as water extinguishes fire."[231]

On multiple occasions he informed his followers of the perils of the tongue: "Whoever believes in God and the Last Day should speak good or keep silent,"[232] he said. He told a man shocked to hear that we would be called to account for what we say, "Is there anything that throws people into Hell on their faces other than the harvests of their tongues." When another man asked him, "What is salvation?" he responded, "Restrain your tongue from yourself, let your home find space for you, and cry because of your sin."[233] In yet a more revealing statement he said, "A person will utter a word that angers God to which he pays no concern, and he will fall because of it into Hell (Jahannam)."[234]

Arab women." Al-Qurṭubī, Aḥmad b. 'Umar. *Al-Mufhim min mā ashkala min Kitāb Muslim*. Damascus and Beirut: Dar Ibn Kathir and Dar al-Kalim al-Tayyib, 1996, 1/269.

230 Denson TF, O'Dean SM, Blake KR, Beames JR. Aggression in Women: Behavior, Brain and Hormones. *Front Behav Neurosci*. 2018 May 2;12:81. doi: 10.3389/fnbeh.2018.00081. PMID: 29770113; PMCID: PMC5942158.

231 Al-Tirmidhi, Abū 'Īsā. *Jāmi' al-Tirmidhī*. Damascus and Riyadh: Dār al-Fayhā' and Dār al-Salām, 1999, p. 594-5, #2616.

232 Al-Bukhārī, Muḥammad b. Ismā'īl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 1533, Hadith #6138.

233 Al-Tirmidhi, Abu 'Isa. *Jāmi' al-Tirmidhī*. Damascus and Riyadh: Dār al-Fayhā' and Dār al-Salām, 1999, p. 548 (#2406).

234 Al-Bukhārī, Muḥammad b. Ismā'īl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 1612, Hadith #6478.

In contrast, the Prophet was quoted as having said, "I was shown Hell and noticed that most of its inhabitants are women. They are ungrateful." When asked, "Are they are ungrateful to God?", he said, "They are ungrateful to [their] husbands (*al-'ashīr*) and show ingratitude towards [their] charity (*al-ihsān*). Were you to be charitable towards one of them for a lifetime and she later took notice of something [unpleasing] in you, she would never acknowledge any good in you again."[235]

Men bear great many burdens placed upon them by God; Men are expected to choose fitting spouses for themselves, for their future children, to ensure their womenfolk have shelter and enough to eat and drink, and sacrifice life and limb, if necessary, to protect them from harm. With noted exceptions, men cover expenses incurred by their wives which are not required of them by Shariah. This includes extensive wardrobes, cellphones, and medical bills.

The Islamic sources appear to corroborate the idea that intelligence is both innate and demonstrative or at least that intelligent people act prudently. Intelligence is more akin to the moral virtue of prudence than it is to intellectual virtues like wisdom and science. This is why its antonym, stupidity, is defined as "behavior that shows a lack of good sense and judgment." In other words, one is as intelligent as his actions are reasonable, purposeful, persuasive, and lead to positive outcomes. This, of course, champions the Rylean definition of intelligence. Ideal leaders are both intelligent (*'aql*) and pious (*dīn*). Intelligence is demonstrative. It is not, merely, a matter of cognition. This is why the Qur'an refers to spendthrifts as "fools" (*sufahā'*) and why political shrewdness (*al-dahā'*) was considered a species of intelligence among Arabs. Notwithstanding the fact that experience

235 Al-Bukhārī, Muḥammad b. Ismā'īl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 16, (#29).

and familiarity can provide a perceptive advantage, 'greater' intelligence does not, necessarily, imply a type of cognition that one person possesses and another lacks. It, rather, suggests a skill or aptitude that makes some more fit for offices of justice.

Readers commonly err in assuming that the hadith on intelligence berates women. The hadith presents temperate and disciplined men as objects of persuasion. The best men are those who maintain their composure and do not succumb to their emotions and passions. It presumes that cunning is required to break a man's poise. That skill to break that poise, largely, belongs to men. While physical compulsion is common among men, rational (*'aql*) and ethical (*din*) appeals (logos and ethos) are the predominant tools of male persuasion. Among women, by contrast, emotional (pathos) and sensual (eros) appeals are predominant tools of persuasion. Despite this, women are declared in the hadith to be more adept at disturbing the calm of the disciplined male than men are. And they achieve this despite lacking the dispassionate advantages found in most men. That is to say that men have a greater aptitude for logos than women generally do. Put another way, men are generally less emotional than women are. But women possess a more effective weapon of persuasion than men do, which is their sensuality which men are eager to exploit even if it means giving women whatever they wish in exchange for it. Think of the stories of the mighty men crushed by their lusts for women only to lose the kingdoms they once ruled.

BALANCING THE EQUATION

Abū Sa'īd al-Khudrī also reports that the Prophet said, "The world is enjoyable [and] appealing. And God has made you to succeed one another therein to see how you would behave. So, beware of the world. And beware of women. For the first test of

the Children of Israel concerned women."[236] The Prophet also said, "I do not leave after my passing a more harmful test for men than women."[237] Beautiful women are not only the greatest distraction men have. The Qur'an and Sunnah teach us that men also have a responsibility for the security and overall well-being of every woman. And while one may see higher levels of emotional reactivity as a sign of irrationality, there may be no greater sign of intelligence than to acknowledge one's vulnerability and realize the importance of being protected by another.

When men are insecure, they exercise, learn self-defense, buy a guard dog or security cameras to monitor their homes. Or they purchase firearms. Women do similar things. But what is most natural for a woman to do is to find a man she believes can grant her the security she needs. Women, generally, prefer to be with men who are taller, stronger, more educated, and come from a higher socioeconomic class than their own. This is called hypergamy. And certain studies indicate that despite feminist efforts, hypergamy remains consistent and on the rise today.[238]

The Qur'anic counsel to men about their wives is, "And associate with them considerately. And even if you dislike them, it may be that God has put much good in something you dislike." (Q 4:19). The Prophet constantly advised men to treat women courteously and with gentle hands. He told his cameleer Anjashah who used to sing to make the camels move faster, "Go easy—O Anjashah—in your transport of the fragile containers" (*ruwaydaka yā Anjashah sawqaka bi al-qawāwīr*). The "fragile containers"

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236 Al-Nawawwi, Yahya b. Sharaf. *Sahih Muslim bi Sharh al-Nawawwi.* Beirut: Dār al-Fikr, 1995, 9/1/49 (#2742).

237 Al-Bukhārī, Muḥammad b. Ismāʿīl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 1299, (#5096).

238 Urbina, D. R., Frye, M., & Lopus, S. (2024). "No End to Hypergamy when Considering the Full Married Population." *Population and Development Review*, 50(2), 1–30.

were the women being carried by those camels. In his farewell address he said, "Go easy in your dealings with women" (*istawsū bi al-nisā'i khayran*). He also said, "A believing man does not despise a believing woman. If he disapproves of something in her conduct, he takes satisfaction in something else."[239]

Abu Hurayrah reports the Prophet as saying, "Go easy in your dealings with women. For the woman was created from a rib. And the most crooked part of a rib is its tip. If you try to straighten it, you will break it. And if you leave it, it will remain crooked. So go easy in your dealings with women."[240] Muslim[241], Dārimī[242], Ibn Hibbān, Hākim, and Tabarānī[243] reported the same

239 Al-Nawawwi, Yahya b. Sharaf. *Sahih Muslim bi Sharh al-Nawawwi*. Beirut: Dār al-Fikr, 1995, 5/2/50 (#1469).

240 Al-Bukhari, Muḥammad b. Isma'il. *Sahih al-Bukhari*. Jedda: Dar al-Minhaj, 2001. Anbiya': 1, hadith #3366. Bukhari also reports the same hadith with the following wording: "The woman is like the rib. If you straighten her, you will break her. And if you take delight in her, you take delight in her despite her crookedness." (#5239)

241 The wording in Muslim's canon is, "Verily the woman has been created from a rib. She will not stay straight upon a [single] mode of conduct. So, if you take delight in her, you take delight in her while she he has in her crookedness. But if you try to straighten her, you will break her. And to break her is to divorce her." (Hadith #3719). Muslim also reports the following versions, "Verily the woman is like the rib. If you try to straighten her, you will break her. But if you let her be, you will take delight in her despite her crookedness." (#3717) "Whoever believes in God and the Last Day, whenever he witnesses a matter, let him speak good or remain silent. Go easy in your dealings with women. For verily the woman was created from a rib. And verily the most crooked thing in the rib is its tip. If you try to straighten it, you will break it. But if you leave it, it will remain crooked. Have the best of intentions with women." (#3720)

242 Dārimī reports the following versions of the hadith in his *Sunan*, "Verily the woman was created from a rib. If you straighten her, you will break her. So, coax her. For surely in her there is curvature (*awad*) and a means of subsistence (*bulghah*)." (#2124) "The woman is nothing more than like the rib. If you straighten her, you will break her. And if you seek delight in her, you will find delight despite her crookedness." (#2125)

243 In the canonical works of Ibn Hibbān, Hākim, and Tabarānī, there is a version of this report that reads,"The woman was created from a rib. So, if

hadith with similar wording. Tirmidhī[244] and Aḥmad[245] include a report with the wording, "The woman is like the rib" instead of "The woman was created from a rib." Most versions also omit the words "...if you leave it, it will remain crooked."[246] Of note is that Abu Hurayrah is the narrator in almost every rendition of the rib hadith. Dārimī and Aḥmad include versions on the authority of the companion, Abu Dharr al-Ghifārī. Aḥmad also has a version on the authority of the Prophet's wife, Ā'ishah. And Ibn Hibbān, Hākim, and Tabarānī all relate similar versions on the authority of Samurah b. Junādah.

Every version is a call for men to be gentle and patient in their treatment of women despite any displeasure they may cause. One version reads, "The woman will not stay [or stand] straight for you upon one mode of conduct. She is just like the rib. If you straighten her, you will break her. And if you let her be, you will find delight in her despite her crookedness." "Not standing upon one mode of conduct" seems to allude to a pattern of non-deliberation, indecisiveness, and fluctuation

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you straighten her, you will break her. So, coax her. You will live with her."

244 The version of Tirmidhī reads, "Verily the woman is like the rib. If you try to straighten her, you will break her. And if you leave her alone, you will find delight in her despite her crookedness." (#1226)

245 Imam Aḥmad reports in his *Musnad* the following renditions of the rib hadith, "The woman is like the rib. So, if you are eager to straighten it, you will break it. And if you leave it alone, you will find delight in it despite its crookedness." (#9159) "The woman will not stay straight for you upon one mode of conduct. She is just like the rib. If you straighten her, you will break her. And if you let her be, you will find delight in her despite her crookedness." (#9419 and #10436) "The woman is like the rib. If you bend her, she will break, though there is in her a means of subsistence and curvature." (#20481)

246 In the canonical traditions of Muslim there is a version that reads, "Verily the woman was created from a rib. She will not stand erect upon a [single] mode..." A similar version found in the *Musnad* of Imam Aḥmad reads, "The woman will not stand straight for you upon one mode of conduct..."

in female behavior that certain scientific studies appear to corroborate.[247] Of this Al-Qurtubī states, "The reasonableness (*'aql*) that women lack is deliberation in matters (*al-tathabbut fī al-umūr*), their verification (*al-tahqīq fīhā*), and the utmost precision in their regard (*al-bulūgh fīhā ilā gāyah al-kamāl*)."[248] Being "created from a rib" or "like the rib" are expressions meant to highlight feminine virtues that men find appealing. And those virtues should discourage men from being discourteous towards them.

As the curvature of a rib's bone does not prevent one from enjoying its meat and one tolerates its crookedness while consuming it, women's more holistic and intuitive approach to problem-solving should not prevent men from enjoying their company and feminine allure. Men should also not pressure women to adopt typical male approaches to discipline and problem solving.[249] To do so would be to impose male norms onto women leading to the "break" the Prophet threatened would result in divorce. So, if one desires domestic harmony, he should accept that women are not like men and that men are not like women. None should attempt to alter the behavioral norms of the other sex as the strength of the relationship originates from complementariness, not uniformity. Holistic intuitive problem solving can be just as, if not more, valuable than sequential analytical thinking in certain contexts. And despite claims to the contrary, neither men nor women are perfect without one

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247 (Eric Rassin and Peter Muris. "To be or not to be ... indecisive: Gender differences, correlations with obsessive-compulsive complaints, and behavioural manifestation." www.sciencedirect.com, Copyright © 2004 Elsevier Ltd All rights reserved).

248 Al-Qurṭubī, Aḥmad b. 'Umar. *Al-Mufhim min mā ashkala min Kitāb Muslim.* Damascus and Beirut: Dar Ibn Kathir and Dar al-Kalim al-Tayyib, 1996, 1/269.

249 Ingalhalikar, M., et al. (2014). Sex differences in the structural connectome of the human brain. *Proceedings of the National Academy of Sciences*, 111(2), 823-828.

another. "Women", as the Prophet said, "are the complementary halves of men."[250]

In Dārimī's version of the hadith, the Prophet's counsel is, "So coax her. For surely in her there is curvature (*awad*) and a means of subsistence (*bulghah*)." In other words, like the rib, women are curvy, think in more roundabout non-linear ways about problems, and behave in less predictable fashions than men do. And as meat sustains life, so does a mother's milk. The male physique is erect and straight. The female body is distinctly curvy. A voluptuous body disturbs male equanimity, making focus extremely difficult and granting women a power over men that no other creature has. A rib is curved, as is a woman's body. And while to people unflattering, no sane person thinks calling a tree branch "crooked" disparaging. The only valid area of controversy surrounds if women's atypical ways happen to be immutable, socially constructed, or biosocial.

If "intelligence" is the best translation of the Prophet's use of "*'aql*", then the putative imperfection of women's intelligence would appear to be mutable; Scholars describe the Prophet's wives Ā'ishah, Umm Salamah, and Safiyyah bt. Huyayy as "intelligent women" (*āqilat al-nisā'*).[251] And the word "*jazlah*" is used to describe the woman who questioned the Prophet about what makes a woman deficient in *'aql* (reasoning) and *dīn* (religious devotion). And "*jazlah*" according to commentators means '*āqilah*' (i.e. intelligent).[252] The Prophet also said, "Of men, many have reached perfection. And of women, none of have reached

250 Al-Tirmidhi, Abū 'Īsā. *Jāmi' al-Tirmidhī*. Damascus and Riyadh: Dār al-Fayhā' and Dār al-Salām, 1999, p.30 (#113).

251 Ibn al-Athīr says of her in *Usd al-Ghābah*, "She was one of the intelligent women" (*kānat 'āqilatan min 'uqalā' al-nisā'*). Al-Jazarī, Ibn al-Athīr. *Usd al-Ghābah fi Ma'rifah al-Sahābah*. Beirut: Dār Ibn Hazm, 2012, p. 1542.

252 Al-Nawwawī said about the word '*jazlah*', "she who possesses intelligence (*'aql*) and prudence (*ra'y*)." Al-Nawawwī, Yahya b. Sharaf. *Sahih Muslim bi Sharh al-Nawawwi*. Beirut: Dār al-Fikr, 1995, 1/2/56 (#79).

perfection other than Maryam the daughter of 'Imrān and Āsiyah the wife of Pharaoh..."[253] If by "perfection" he means intellectual virtues, women have the aptitude to acquire them, but few had succeeded in doing so prior to the Prophet's pronouncement. However, as some scholars believe this hadith proves that some prophets were women, this "perfection" must refer to infused virtue beyond the control of both men and women, as prophethood is not acquired. Prophets are chosen.

CONCLUSION

Is rationality distinct from intelligence? And, if so, are women deficient in one or the other? Is intelligence an aptitude for theorizing or competent action on the part of the actor? If both men and women are "rational animals", then why would one be deficient and not the other? And is that deficiency immutable, social, or biosocial? If imperfect rationality means weak equanimity and higher emotional reactivity, few will disagree with the assertion that women are, generally, more emotional and intuitive than men. The challenge, however, is that in one version of this hadith the Prophet explained that two women being equal to one man when testifying to the details of a disputed business agreement is because of an apparent ratiocinative distinction he call *'aql*. This was his reply to what makes a woman deficient in *'aql* even though it was not a clear answer to what was asked of him, "What is the deficiency in our *'aql*?" This implies either: 1) that *'aql*, in the Prophet's declaration, means the capacity to accurately retain information like the details of an agreement; 2) that this retention capacity is merely a sign or aspect of *'aql*; or 3) that the hadith pertains only to the notion that men presumably retain such information better than women. If the latter,

253 Al-Bukhārī, Muḥammad b. Ismāʿīl. *Sahih al-Bukhārī*, Damascus & Beirut: Dār Ibn Kathīr, 2002, p. 844, (#3411).

it would stand to reason that difficulty of recall was because most women of that time bore no financial burdens and, consequently, had little opportunity to witness business agreements. Another explanation could be that as the narrator did not recall the Prophet's exact words, he offered this incoherent response to the question asked.

Men clearly outpace women in the STEM fields which require more abstract thinking and visual-spatial talent. Women, on the other hand, dominate the study of the life sciences. Islam is an integrated whole, which is why I've attempted to combine different hadiths to properly understand what the Prophet meant when he said that women are "imperfect in *'aql*." In my view, "reasoning" or "reasonableness" is the most accurate translation but that a woman's "imperfection" therein applies to her idiosyncratic behavior patterns like emotional reactivity which can be a challenge in offices of justice and her weakness in abstract thinking and visual-spatial skills required in strategic activities like military and political mobilization.

And while there is debate about intelligence among psychologists, I believe the Prophet's proclamations endorse the notion that intelligence is demonstrative; The unlearned can learn. The illiterate can achieve literacy. And good training can improve comprehension. Spendthrifts are called fools in the Qur'an. And so are those who reject Abraham's theological and moral tradition. Women throughout much of human history had limited access to political leadership, business, and were not, typically, consulted in martial encounters. Each arena of male interaction was used to measure intelligence.

That is not to suggest that the Shariah should change because women have a greater public role in our times. The point is merely that the degree of male and female "reasonableness" differs. This appears to be the primary message of the hadith of this chapter, which is that women have a talent that

men do not despite lacking the traits one would expect her to have to subdue a strong resolute man. Men conquer other men with their muscles and wits. Women neutralize wit and control muscle through eroticism and feminine allure. This being so, the exploitation of male lust for women serves as a more powerful tool against a foe than male cunning.

In the end, the hadith should not be taken to mean that women are not intelligent. The point is that they are, generally, less adept at abstraction, political shrewdness, and military cunning than men are, generally. Whether that is due to nature or nurture is unimportant as long as this statistical disparity is sustained. The most intelligent men are those who believe in God, embrace Abrahamic morality, manage their income and expenditures well, and effectively secure the wellbeing of their family and countrymen. The most intelligent women are those who after realizing their vulnerabilities, find good believing men who are physically strong and understand how to protect them and provide for their wellbeing and that of their offspring. They are the submissive ones to both God and their husbands, who trust God's wisdom and obey their husbands' righteous commands.

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